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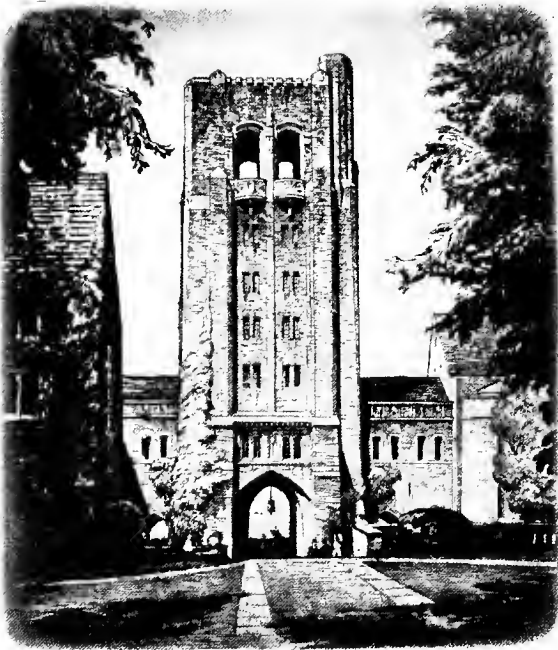
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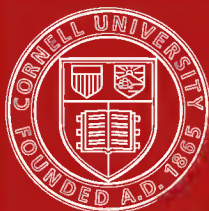
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EXCISE LAW

OF THE

STATE OF NEW YORK,

WITH

CIVIL DAMAGE ACT,

And all Statutes, Including 1880.

WITH

NOTES OF DECISIONS OF THE COURTS

AND

FORMS.

BY WILLIAM W. SAXTON,

COUNSELLOR AT LAW,

COMPILER OF TAX LAW OF THE STATE OF NEW YORK

SECOND EDITION.

NEW YORK:

S. A. WILDER & CO.,

LAW BOOKSELLERS AND PUBLISHERS,

95 NASSAU STREET.

1880.

M12461

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PREFACE TO SECOND EDITION.

Since the publication of the first edition of the following work in 1873, many statutes have been enacted by the Legislature, and important decisions made by the Courts affecting the Excise Law.

The incorporation of this matter has largely increased the size of the volume,

All the Statutes relating to the Excise Law, and the Judicial Decisions, have been compiled down to and including the year 1880.

The importance of the subject, and the favorable reception of the work have led to the publication of a second edition.

W. W. S.

HUDSON, N. Y., {
Sept. 15, 1880. }

PREFACE TO FIRST EDITION.

I present to the public the Excise Law of the State of New York down to and including all the amendments of 1873.

The Legislators have done so much altering of the "Laws Regulating the Sale of Liquors," from 1857 to 1873, that it may be pardonable if those who are engaged in the Sale of Liquor should not clearly understand the Law.

After a careful examination of all the Laws "Regulating the Sale of Liquors," as also the acts "To Suppress Intemperance, Pauperism and crime," and the several acts amending the same, I respectfully submit the following as the Excise Law of the State of New York.

W. W. S.

EAST CHATHAM, N. Y., }
Sept. 11, 1873. }

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EXCISE LAW.

SECTION I.

Commissioners of excise.

In cities.

In incorporated villages.

In towns.

Town commissioners not to grant licenses in incorporated villages.

SECTION 1. There shall be a board of commissioners of excise in each of the cities, incorporated villages and towns of this State. Such boards in cities shall be composed of three members, who shall be appointed as hereinafter provided; in incorporated villages the board shall consist of the president of the board of trustees and two other trustees, to be designated by said board of trustees, and said president of the board of trustees shall be president of said commissioners of excise; and in towns they shall consist of the supervisors and justices of the peace thereof, for the time being, respectively. Any three members shall be competent to execute the powers vested in any town boards; and in case the office of supervisor be vacant, or there be not two justices in the town, then the town clerk shall act in their places respectively. No license for the sale of intoxicating liquors shall be granted within the limits of any incorporated village of this State by the commissioners of excise of the town within the limits of which said village is situated, in whole or in part; but in any incorporated village licenses for the sale of intoxicating liquors shall be granted by the commissioners of excise of said village only. (*Section 1, chap. 175, 1870, as amended by section 1, chap. 249, 1873.*) *Laws 1874 p 362*

SECTION II.

Commissioners of excise to be elected.

Their duties.

Compensation.

To be classified.

One commissioner to be elected annually.

Vacancies.

SECTION 2. At the annual town meetings in the several towns in this state, held next after the passage of this act, there shall be elected in the same manner as other town officers are elected, three commissioners of excise, who while acting as such commissioners, shall not hold either of the offices of supervisor, justice of the peace, or town clerk, the office of president or trustee of any incorporated village, and who shall compose the board of excise of their respective towns, and discharge the duties imposed upon the supervisor and justices of the peace of towns, and the president and trustees of incorporated villages thereof, by chapter one hundred and seventy-five of the laws of eighteen hundred and seventy, and laws amendatory thereof and supplementary thereto; and shall be entitled to receive compensation at the rate of three dollars per day, while in session, as a board of excise, which shall be a town charge; except in the counties where the moneys received by said board are paid into the county treasury as hereinafter provided, when it shall be a county charge. The commissioners first elected under this act shall be classified by lot, under the superintendence of the supervisor, the justice of the peace having the shortest time to serve, and the town clerk, or a majority of such officers who shall meet at the office of the town clerk of their respective towns, for such purpose, within ten days after such town meeting, and the persons drawing for one, two and three years, shall serve for such terms respectively; and annually thereafter one commissioner of excise shall be elected for a term of three years. Vacancies occurring in said boards, from any cause, shall be filled by appointment by the supervisor and justices of the peace of said town, or a majority of them, until the next annual town meeting, when such vacancy shall be filled by election.

SECTION III.

To be voted for on separate ballot.

Oath of office and bond.

Excise moneys, how disposed of.

SECTION 3. The said commissioners shall be voted for upon a separate ballot, which shall be deposited in a separate box, marked "excise," and before entering upon the duties of their offices, shall take and subscribe the constitutional oath of office and file the same with the town clerk, and shall execute a bond to the supervisor thereof to be approved by him in double the amount of the excise moneys of the preceding year, conditioned for paying over to him or his immediate successor in office, within thirty days after the receipt thereof, all moneys received by them as such excise commissioners. Said money shall be disposed of as directed by the town board, except in those counties where the support of the poor is a county charge, where such excise money shall be paid into the county treasury, subject to the control of the board of supervisors.

2. Nothing in this act shall affect the provisions of any special act in so far as the same provides for any special disposition of excise moneys or fines.

Law 1874, chap. 444, sec. 2 and 3.

SECTION IV.

Appointment of Commissioners in cities.

Present commissioners to hold until others are appointed.

Term of office.

Salary.

Triennial appointment.

Vacancies.

Removal.

SECTION 4. The mayor of each of the cities, except in the cities of New York, Brooklyn, and Poughkeepsie, shall appoint the commissioners of excise in their respective cities within ten days after the passage of this act; but in the cities of New York, Brooklyn, and Poughkeepsie, the mayor shall nominate three good and responsible citizens to the board of aldermen of such cities respectively, who shall confirm or reject such nominations. In case of the rejection of such nominees, or any of them, the

mayor shall nominate other persons as aforesaid, and shall continue so to nominate, until the nominations shall be confirmed. The present commissioners of excise for the metropolitan district and the commissioners for the counties shall continue to exercise the duties of the office until such appointments, or some one of them shall be appointed in such cities respectively, as herein provided. Any one or more of the commissioners so appointed shall have the power to act as a board of excise for the city in which he shall be appointed, until the others shall be duly appointed. Commissioners of excise in cities shall hold their offices for three years, and until others shall be appointed in their places, and shall receive a salary not to exceed twenty-five hundred dollars a year each, to be fixed by the mayor and common council of their respective cities, and shall be paid as other city officers are paid. On the first Monday of April in every third year hereafter, the mayor and board of aldermen shall proceed to appoint, in the manner above described, persons qualified as aforesaid, to be such commissioners of excise in their respective cities for the next three years, commencing on the first day of May in that year and shall, from time to time, as often as vacancies shall occur appoint persons qualified as aforesaid to fill the unexpired term of any commissioners who shall die, resign, remove from the city, or be removed from office. Such commissioners of excise in cities shall be removed for any neglect or malfeasance in office, in the same manner as provided by law for the removal of sheriffs.

SECTION 4. This act shall take effect immediately.

Laws 1879, chap. 145, amending Laws 1870, chap. 175, section 2.

Laws 1873, chap. 549.

Laws 1874, chap. 642.

Power of appointing commissioners in cities, see *People v. Gates*, 56 N. Y. Rep., 387.

A board of commissioners of excise may employ an attorney to prosecute for penalties ; and as they are agents of the county in so doing, the compensation for such services are a county charge, but can only be collected by audit of the board of supervisors. (*People ex rel. Johnson v. Supervisors of Delaware County*, 45 N. Y., 196; *Buck v. The City of Lockport*, 6 Lansing [Supreme Court Rep.], 253.) *part A 23*

The legal fees and the reasonable disbursements for subpoenaing witnesses by the attorney of a board of excise, if necessary, in actions brought by him in the course of his official duty, are lawful charges against the county, and the supervisors may be compelled by mandamus to audit them. (*People ex rel. Johnson v. Supervisors of Delaware County*, 45 N. Y., 196.)

The fees of a sheriff for services in actions brought for the commissioners of excise of their county, are county charges. His fees for services in actions brought for the benefit of the metropolitan police fund, or the treasury of the state are not. (*People ex rel. Kelly v. Haws*, 12 *Abbot Prac. Rep.*, 192; *Same case*, 21 *Howard Prac. Rep.*, 117.)
may employ an informed 29 How. 33.

The appointment of commissioners of excise in the cities cannot be made verbally.

The People ex rel. Babcock v. Murray, 70 N. Y. Rep., 521.

People ex rel. Kresson v. Fitzsimmons, 68 N. Y. Rep., 515.

They cannot by their act or consent transfer the office to others, or relieve themselves from the duties of the office, save in one of the ways designated by statute.

Id.

SECTION V.

Declaratory of Chapter 145, Laws of 1879.

SECTION 5. Nothing contained in chapter one hundred and forty-five of laws of eighteen hundred and seventy-nine, entitled "An act to further amend chapter one hundred and seventy-five of the laws of eighteen hundred and seventy, entitled 'An act regulating the sale of intoxicating liquors,'" shall be construed to affect the provisions of chapter six hundred and forty-two of the laws of eighteen hundred and seventy-four, entitled "An act declaratory of and to amend chapter five hundred and forty-nine of the laws of eighteen hundred and seventy-three, entitled 'An act to amend an act entitled 'An act regulating the sale of intoxicating liquors,' passed April eleventh, eighteen hundred and seventy, and the act entitled 'An act to suppress intemperance and to regulate the sale of intoxicating liquors,' passed April sixteenth, eighteen hundred and fifty-seven,'" passed June twenty-third, eighteen hundred and seventy-four.

SECTION 2. This act shall take effect immediately.

Laws 1879, chap. 472.

SECTION VI.

Meetings of excise boards.

Term of license.

SECTION 6. The commissioners of excise shall meet in their respective cities, villages and towns, on the first Monday of May in each year, and on such other days as a majority of the commissioners shall appoint, not exceeding once each month in any year in any town or village, for the purpose of granting licenses, as provided by law. In cities they shall meet on the first Monday of each month, and as often as they shall deem necessary. All such licenses shall expire at the end of one year from the time they shall be granted. (*Sec. 3, chap. 175, 1870.*)

An agreement, by the lessee of a hotel, to lease to another the hotel bar, and sell him the right to sell liquors under the license of the former, is illegal and void, as providing for a violation of the law. (*Sanderson v. Goodrich, 46 Barb. Supreme Ct. Rep., 616.*)

A license to keep a tavern is a personal trust: defendant cannot justify under a license given to his lessor. (*Alger v. Weston, 14 Johns. Rep. [N. Y.], 231.*)

The term "year" means not the Callender, but the Excise Year. *Disbrow v. Saunders, 1 Denio R., 149.*

SECTION VII.

Persons to whom licenses may be granted.

Amount to be paid therefor.

Application for licenses to be posted in room where sales are made.

Evidence.

Record to be kept.

Sales in quantities of five gallons and over.

SECTION 7. The board of excise in any city, town or village shall have the power to grant license to any person or persons of good moral character, who shall be approved by them, permitting him or them to sell and dispose of, at any one named place within such city, town or village, strong or spirituous liquors, wines, *ale and beer in quantities less than five gallons at a time upon receiving a license fee, to be fixed in their discretion, and which shall not be less than thirty dollars, nor more than \$150

in any town or village; and not less than thirty dollars, nor more than \$250 in any city. Such licenses shall only be granted on written application to the said board, signed by the applicant or applicants, specifying the place for which license is asked, and the name or names of the applicant or applicants, and of every person interested or to be interested in the business to authorize which the license shall be used; and the license shall be kept posted, by the person or persons licensed, in a conspicuous position in the room or place where his or their sales are made, and shall be exhibited at all times by the person or persons so licensed, and by all persons acting under such license, on demand, to every sheriff, constable or officer, or member of police. Any omission so to display and exhibit such certificate shall be presumptive evidence that any person or persons so omitted to display and exhibit the same has and have no license. The said board of excise shall keep a complete record of the names of all persons licensed, as herein provided, with a statement of the place licensed, and license fee imposed and paid in each case, which record they shall at all times permit to be seen, in a convenient place at their principal office in any city, or at the clerk's office in any town or village. Persons not licensed may keep, and, in quantities not less than five gallons at a time, sell and dispose of strong and spirituous liquors, wines, ale and beer, provided that no part thereof shall be drunk or used in the building, garden or inclosure communicating with, or in any public street or place contiguous to the building in which the same be so kept, disposed of or sold. (*Section 4, chap. 175, 1870, as amended by sec. 2, chap. 549, 1873*).

The commissioners are liable, criminally, for an unlawful and corrupt exercise of the powers vested in them. While they are responsible only for good faith and integrity, they cannot from corrupt motives, either grant or withhold a license improperly, and shield themselves under the judicial character of their office. (*The People v. Jones et al.*, 54 Barb. [Sup. Court R.], 311.)

Since the statute requires the license to be in writing, defendant cannot justify under a parole license.

Lawrence v. Gracy, 11 Johns, 179, Not Transferable.
Alger v. Weston, 14 Johns, 231.

A license illegal from want of authority to grant it, is no defence to an action for the penalty.

Palmer v. Daney, 2 Johns, Cases 346.

If commissioners refuse to license any person within their district, does not justify any person in selling without a license.

Mayor &c. of N. Y. v. Mason, 4 E. D. Smith R., 142 ; Village of Rome v. Knox, 14 Howard Prac. R., 268.

In what cases licenses may be granted ; and with what effect.

O'Rourke v. People, 3 Hun. R., 225.

The provisions therefore of the act of 1870, (sec. 4,) authorizing the granting of licenses for the sale of intoxicating liquors in quantities less than five gallons, is to be construed in connection with the former provisions, and a license granted under it gives no authority to one who is not an innkeeper to sell liquors to be drank on the premises.

People v. Smith, 69 N. Y. Rep., 175.

The provisions of said act, forbidding the granting of licenses to persons not having sufficient ability to keep a tavern, and not having the necessary accommodations to entertain travelers, is still in force.

People v. Hartman, 10 Hun., 602.

License to the defendant from board of excise of the town giving permission to sell intoxicating liquors, not a bar to plaintiff's action.

Quain v. Russel, *et al.*

12 Hun. 376.

Baker v. Pope, 2 Hun. 550.

Excise licenses to persons not keeping inns.

People v. Morrison, *et al.* New York Supreme Court Chambers. Opinion, Westbrook, J. Reported Albany Law Journal. Vol. 22, p. 210.

SECTION VIII.

No sales to be made between one and five o'clock A.M,

SECTION 8. Licenses granted, as in this act provided, shall not authorize any person or persons to expose for sale, or sell, give away, or dispose of, any strong or spirituous liquors, wines,

ale or beer, on any day between the hours of one and five o'clock in the morning. And all places, licensed as aforesaid, shall be *closed, and kept closed between the hours aforesaid, and at all other times when such selling is not authorized by law. And it shall be the duty of every sheriff, constable, policeman and officer of police to enforce the observance of the foregoing provisions. Nothing herein contained shall be construed to prevent hotels from receiving and entertaining travelers at any time, subject to the restrictions contained in this act, and the act hereby amended. (*Section 5, chap. 175, 1870, as amended by section 3, chap. 549, 1873.*)

* 33 Mich. 279, Post. 39.

5 Reports

Selling without a license is a misdemeanor and indictable; and this notwithstanding the defendant has been already sued for the penalty. (*People v. Stevens*, 13 *Wend. Rep.*, 341; *People v. Brown*, 16 *id.*, 561; *Blatchley v. Moser*, 15 *id.*, 215.)

56 N. Y. Rept. 321.

SECTION IX.

Repeal of metropolitan excise board.

License law of 1857, how applicable.

SECTION 9. The act entitled "An act to regulate the sale of intoxicating liquors within the metropolitan police district of the State of New York," passed April fourteenth, eighteen hundred and sixty-six, is hereby repealed, and the provisions of the act passed April sixteenth, eighteen hundred and fifty-seven, except where the same are inconsistent or in conflict with the provisions of this act, shall be taken and construed as a part of this act, and be and remain in full force and effect throughout the whole of this State. (*Section 6, chap. 175, 1870.*)

4 Hun. 520.

By expressly preserving all the provisions of the act of 1857 (*Edmonds' Rev. Stat.*, vol. 7, p. 668) not inconsistent with itself, the act of 1870 preserves all the penalties of the former act which are in harmony with its provisions. (*Commissioners of Excise of Cattaraugus Co. v. Wiley*, 2 *Lans.*, 427.)

On an indictment against commissioners of excise for granting a license illegally, proof of the mere granting of a license which ought not to have been granted does not establish an offense; but the jury must be able to say, from the evidence, that it was not a proper case for a license under the statute, and nevertheless granted it, in willful disregard of the statute. (*People v. Jones*, 54 *Barb. Sup. C. R.*, 311.)

SECTION X.

Pay of commissioner in towns.
License fee, how disposed of.
Minutes of board, how deposited.

SECTION 10. In no town or village shall the commissioners of excise, created by this act, appoint a clerk of the board of excise. The pay of commissioners of excise in towns or villages shall be three dollars per diem. The moneys arising from licenses in any town or village shall be deposited with the county treasurer, within thirty days after receiving the same, to be expended, under the direction of the board of supervisors at their next annual meeting, for the support of the poor of such town. Moneys arising from licenses in cities shall be paid into the treasuries of such cities respectively. The book of minutes kept by the commissioners of excise in any town or village, except when in use by such commissioners, shall be deposited in the clerk's office of such town or village. The expenses of procuring necessary books for minutes, and necessary blanks, in any town or village, when actually incurred, shall be audited and paid in like manner as other town or village charges. (*Section 7, chap. 175, 1870; Edmonds' ed. Rev. Stat., vol. 7, p. 668.*)

32 Wisc. 357.

Surplus of excise moneys, after support of poor, may be applied to ordinary town expenses. (*General Statutes of N. Y. for 187, chap. 143, p. 69.*)

SECTION XI.

When license to be forfeited.
Enter upon premises and cancel license.
May summon witnesses.

SECTION 11. Any conviction for the violation of any provision of this act or of the acts hereby amended, by any person or persons licensed, or at at any place licensed as herein provided, shall forfeit and annul such license. The board of excise of any city, town or village may, at any time, and upon the complaint of any resident of said city, town or village, shall summon before them any person or persons licensed as aforesaid; and if they shall become satisfied that any such person or persons has or have violated any of the provisions of this act or of the acts hereby

amended, they shall revoke, cancel and annul the license of such person or persons, which they are hereby empowered to do, and where necessary to enter upon the premises and take possession of and cancel such license. Upon an inquiry the said board, or the party complained of, may summon, and the said board may compel the attendance of witnesses before them and examine them under oath. (*Sec. 8, chap. 175, 1870; as amended by sec. 4, chap. 549, 1873.*)

The board may employ an attorney to conduct any prosecution commenced by them, but cannot give general authority to commence any such prosecution at his discretion. In the employment of an attorney, etc., the board, or a majority of them, must act, or authorize the act. (*Board of Excise v. Sackrider, 35 N. Y. Rep., 154.*) *auth R 16*

Metcalf v. Garlinghouse, 40 Howard Pr. R., 50.

After an innkeeper's license expires, he is not liable for selling without license, by reason of the commissioners neglect to meet.

Mayor &c. of New York, 4 E. D. Smith, 142.

Same case, 1 Abbots, Prac. R., 344.

Power to administer oaths and revoke licenses. *People ex rel. Beller v. Wright, 3 Hun., 306.*

Power to revoke in Brooklyn, *People ex rel. Pressmyer v. Commissioners of Police and Excise, 59 N. Y. R., 92.*

Application of act to New York. *Schwab v. People, 4 Hun., 520.*

Conviction terminates license. *People v. Tighe, 5 Hun., 25.*

The provisions of the excise law of 1873, sec. 8, chap. 549, providing for a cancellation by boards of excise, of licenses granted for the sale of intoxicating liquors, is not in contravention of the constitutional provisions preserving the right of trial by jury. The power to license and to cancel licenses is vested in the legislature, and the mode and manner in which it shall be done rests in the legislative discretion.

People ex rel. Pressmyer v. Board of Commissioners of Police and Excise in the City of Brooklyn, et al, 59 N. Y. R., 93.

SECTION XII.

Powers of commissioners to grant license to hotels.

Powers of commissioners to grant license to storekeepers.

SECTION 12. The commissioners of excise shall have power to grant licenses to keepers of inns, taverns or hotels, being residents of the town or city where such inn, tavern or hotel is proposed to be kept, to sell strong and spirituous liquors and wines to be drank in their houses respectively; and to storekeepers, being such residents, a license to sell such liquors and wines in quantities less than five gallons, but not to be drank in their shops, houses, outhouses, yards or gardens. (*Part of sec. 2, chap. 628, 1857.*)

90 III. 218.

The duties devolved upon the commissioners of excise by chap 628, Laws of 1857 (4 *Edmonds' Stat.*, p. 46) are, to some extent, discretionery and judicial. They cannot be coerced in the exercise of their discretion, by *mandamus* or otherwise, and for a mere mistake they are not liable, either civilly or criminally. (*The People v. Jones et al.*, 54 *Barb.* [*Sup. Court R.*], p. 311.)

People v. Norton, 7 Barbour, 477.

SECTION XIII.

Commissioners to sign licenses.

SECTION 13. All licenses shall be signed by the commissioners granting the same. They shall not be issued until the requirements fixed by the board shall have been complied with. (*Part of section 4, chap. 628, 1857.*)

Since the statute requires the license to be in writing, the defendant cannot justify under a parol license from the supervisor to whom he had paid the fee. (*Lawrence v. Gracy*, 11, *Johns. R.*, 179.)

SECTION XIV.

To make annual reports.

SECTION 14. The commissioners of excise in the several counties in this State are hereby required to make an annual

report to the boards of supervisors of said counties at each annual meeting of said boards and within the first five days from the first day of such annual meeting in each and every year after the passage of this act. (*Section 1, chap. 274, L. 1860; 4 Edmonds' Rev. Stat., p. 55.*)

SECTION XV.

Contents of report.

SECTION 15. Such report shall be in writing, and shall be signed by the said commissioners, or a majority of them, and shall contain a true statement of all moneys received by them as such commissioners in their official capacity during the year preceding the date of said report, and also the name of every person in said county to whom the said commissioners have granted a license to sell strong and spiritous liquors under any section of the excise law passed April 16, 1857. (*Section 2, chapter 274, 1860.*)

SECTION XVI.

Reports to be verified by oath.

SECTION 16. Such report, when so made as aforesaid, shall be verified by oath or affirmation of the said commissioners, or a majority of them, and shall contain a written statement indorsed thereon, signed by the county treasurer of the county, setting forth the whole amount of money paid over to them by said commissioners during the same year in which such report shall be made; and the said commissioners shall also report to said boards the whole amount of fines or penalties received by them in their official capacity from any and every person for any violation of the act entitled "An act to suppress intemperance, pauperism and crime," passed April 16th, 1857; and in case said commissioners or either of them shall neglect or refuse to report as aforesaid, he or they shall forfeit and pay \$100 for every such neglect or refusal, to the use of the people of the county in which he or they may reside. (*Section 3, chap. 274, 1860.*)

All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. (*Section 4, chap. 274, Laws 1860; 4 Ed. Rev. Stat., p. 56.*)

SECTION XVII.

Granting of licenses.

SECTION 17. License shall not be granted to any person to sell strong and spirituous liquors and wines to be drank on the premises of the person licensed, unless such person proposes to keep an inn, tavern or hotel, nor unless the commissioners are satisfied that the applicant is of good moral character, that he has sufficient ability to keep an inn, tavern or hotel, and the necessary accommodations to entertain travelers, and that an inn, tavern or hotel is required for the actual accommodation of travelers at the place where such applicant resides or proposes to keep the same, all of which shall be expressly stated in such license; and no such license shall be granted except on the petition of not less than twenty respectable freeholders of this state, residing in the election district where such inn, tavern or hotel is proposed to be kept, by them duly signed, and verified by the oath of a subscribing witness; and not then, unless in the opinion of the commissioners such inn, tavern or hotel is necessary or proper; and not more than one license shall be granted on the memorial of the same petitioners, or any of them. And in case the commissioners shall grant any license contrary to the provisions of this act, they shall be deemed guilty of a misdemeanor. (*Section 6, chap. 628 1857; see ante, sec. 7.*)

59 How. 35, 910 Week. Dig. 409 Id. 413.

The excise law of 1857 requires that persons licensed to sell liquors to be drank on the premises shall propose to keep an inn or tavern, etc., so that a license issued under that law is not only to the person to sell, etc., but is also a license at a particular place. Such a license will protect the agent or clerk of the licensee; but the fact that he acted for another party will not protect one who sells, as the agent or clerk of a person, or at a place not licensed. (*Board of Commissioner of Excise of Orange County v. Dougherty*, 55 Barb. Sup. C. Rep., p. 332.)

Act of 1857, sec. 6, requiring petition of twenty freeholders is repealed by the act of 1870.

People v. Smith, 69 N. Y. Rep., 175.

People v. Hartman, 10 Hun., 602.

SECTION XVIII.

Bond to be taken by commissioners.

SECTION 18. Nor shall such license to keep an inn, tavern or hotel be granted until the applicant shall have executed and delivered to the board of commissioners of excise herein provided a bond to the people of this state, in the penal sum of \$250, with sufficient sureties, who shall duly justify in the sum of \$500, to be approved by the board of commissioners, with a condition that such applicant, during the time that he shall keep any inn, tavern or hotel, will not suffer it to be disorderly, or suffer any gambling, or keep a gambling table of any description within the inn, tavern or hotel so kept by him, or in any out-house, yard or garden belonging thereto. (*Section 7 chap. 628, 1857.*)

A sworn complaint in writing charging the plaintiff, “keeper of a saloon,” etc., with being a disorderly person, by allowing drunkenness and gambling in his saloon by men and boys.—*Held*, sufficient. (*Gardner v. Bain. 5 Lans. Rep., 256.*)

An innkeeper’s bond, under Laws, 1857, that he will not keep a gambling table of any description, is broken by keeping a billiard table which his guests and others use under a rule that the losing party of each game should pay him for the use of the table. (*People v. Harrison, 28 Howard Prac. Rep., 247.*)

Under sec. 7, any person who shall be guilty of either offense, shall, for each offense, forfeit twenty-five dollars; several offenses of one class render the offender liable to only one penalty.

Tiffany v. Driggs, 13 Johns. R., 253.

Blatchly v. Moser, 15 Wendell R., 215.

SECTION XIX.

What to be kept by innkeepers.

SECTION 19. Every keeper of an inn, tavern or hotel, in any of the towns or villages of this state, shall keep in his house at least three spare beds for his guests, with good and sufficient bedding, and shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle, more than his own stock, for the accommodation of travelers; and every keeper

of an inn, tavern or hotel in the cities of this state, shall keep at least three spare beds and the necessary bedding for the accommodation of travelers. For every neglect or default in having either of the articles herein required, such keeper shall forfeit ten dollars, to be recovered by the overseers of the poor, for the use of the poor. (*Section 8, chap. 628, 1857.*)

To constitute an innkeeper, a tavern keeper or a hotel keeper, the party so designated must receive and entertain as guests those who choose to visit his house. A restaurant where meals are furnished, is not an inn or tavern. (*The People v. Jones et al., 54 Barb. Sup. Court Rep., p. 311.*)

The mere granting of a license as a tavern keeper, improvidently or improperly, to one who has no accommodations for guests, and whose place is unfit for a tavern, does not render the commissioners criminally liable. To constitute an offense the license must have been granted with full knowledge of the facts, and willfully, with intent to violate the statute. (*Id.*)

SECTION XX.

To put up a sign.

SECTION 20. Every inn, tavern or hotel keeper licensed under the provisions of this act shall, within thirty days after obtaining his license, put up a proper sign on or adjacent to the front of his house, with his name thereon, indicating that he keeps an inn, tavern or hotel; and he shall keep up such sign during the time that he keeps an inn, tavern or hotel. For every month's neglect to keep up such sign he shall forfeit ten dollars. (*Section 9, chap. 628, 1857.*)

The terms "inn, tavern or hotel" are used synonymously by the statute of 1857, to designate what is ordinarily and popularly known as an inn or tavern, or place for the entertainment of travelers, and where all their wants can be supplied. (*The People v. Jones et al., 54 Barb. Sup. Court Rep., p. 311; Krohn v. Sweeney, 2 Daly, 200.*)

A mandamus will not be awarded to compel an act by a public officer in respect to which he may exercise judgment or discretion.

People ex rel., Hammond v. Leonard, Overseer, 74 N. Y. Rep., 443.

SECTION XXI.

No recovery for liquor trusted.

SECTION 21. No inn, tavern or hotel keeper who shall trust any person, other than those who may be lodgers in his house, for any sort of strong or spirituous liquors or wine, shall be capable of recovering the same by any suit. All securities given for such debts shall be void; and the inn, tavern or hotel keeper taking such securities with intent to evade this provision, shall forfeit double the sum intended to be secured thereby. (*Sec. 10, chap. 628, 1857.*)

SECTION XXII.

Clause in license, not to be drank in house, shop, etc.

SECTION 22. In all licenses that may be granted (excepting to inn, tavern or hotel keepers), to sell strong or spirituous liquors or wines, in quantities less than five gallons, there shall be inserted an express declaration that such license shall not be deemed to authorize the sale of any strong or spirituous liquor or wine to be drank in the house or shop of the person receiving such license, or in any out house, yard or garden appertaining thereto or connected therewith. (*Sec 11, chap. 628, 1857.*)

One licensed as an innkeeper has no right to sell liquor by the gallon to be carried away. (*Benson v. Moore, 15 Wend. R., 260.*)

SECTION XXIII.

To be of good character, and give innkeeper's bond.

SECTION 23. Such licenses shall not be granted, unless the commissioners are satisfied that the applicant is of good moral character, nor until such applicant shall have executed a bond to the people of this state in the penal sum of \$500, with sufficient sureties, who shall duly justify in the sum of \$1,000, to be approved by the commissioners, and to be delivered to the commissioners, conditioned that, during the term for which his license shall be granted, he will not suffer his place of business to become disorderly; that he will not sell, or suffer to be sold, any strong or spirituous liquors or wines to be drank in

his shop or house, or in any out-house, yard or garden appertaining thereto, and that he will not suffer any such liquor sold by virtue of such license to be drank in his shop or house, or in any out-house, yard or garden belonging thereto; and whenever any person is seen to drink in such shop or house, out-house, yard or garden belonging thereto, any spirituous liquors or wine forbidden to be drank therein, it shall be *prima facie* evidence that such spirituous liquor or wines were sold by the occupant of such premises, or his agent, with the intent that the same should be drank therein. On any trial for the offense last aforesaid, such occupant or agent may be allowed to testify respecting such sale. (*Sec. 12, chap. 628, 1857.*)

Justices, in granting or refusing licenses under the excise law, do not act solely as judicial officers. They have, indeed, a discretion, but their duties are so plainly defined that if they disregard them they are liable to an indictment. (*People v. Norton, 7 Barb., 477.*)

SECTION XXIV.

Penalties for violation.

SECTION 24. Whoever shall sell any strong or spirituous liquors or wines in less quantities than five gallons at a time, without having a license therefor, granted as herein provided, shall forfeit fifty dollars for each offense. (*Sec. 13, chap. 628, 1857.*)

Licenses to sell liquors are not contracts between the state and the licensee, giving the latter vested rights, protected on general principles, or by the Constitution of the United States. (*Metropolitan Board of Excise v. Barrie, 34 N. Y. Rep., 657.*)

A husband is liable for a statute penalty incurred by his wife, as, for example, the penalty for a sale of liquors without license, made by the wife in her husband's house during his absence. (*Hasbrouck v. Weaver, 10 John Rep., 256.*)

Strong and spirituous liquors, as employed in law of 1857, chap. 628 (4 *Ed. Rev. Stat., p. 46*), embraces strong beer. (*Commissioners of Excise of Tompkins County v. Taylor, 21 N. Y. Rep., 173; Board of Excise of Cayuga Co. v. Frecoff, 17 How. Pr. R., 442; Nevin v. Ladue, 3 Denv. R., 437.*)

Intoxicating liquors are those the use of which is *ordinarily or commonly* attended with entire or partial intoxication. (*People v. Zeiger, 6 Parker Crim. Rep., 355.*)

SECTION XXV.

Penalties for violation.

SECTION 25. Whoever shall sell any strong or spirituous liquors or wines, to be drank in his house or shop, or any out-house, yard or garden appertaining thereto, or shall suffer or permit any such liquors or wines sold by him, or under his direction or authority, to be drank in his house or shop, or in any out-house, yard or garden thereto belonging, without having obtained a license therefor as an inn, tavern or hotel-keeper, shall forfeit fifty dollars for each offense. (*Sec 14, chap. 628, 1857.*)

In an action for a penalty for selling liquor without a license, the burden of proof is upon defendant to show that he had a license; that being a matter peculiarly within his own knowledge. (*Potter v. Deyo*, 19 *Wend. R.*, 361; *Mayor, etc. of N. Y. v. Mason*, 4 *E. D. Smith Rep.*, 142.)

The act of April 11, 1870, chap. 175 (*Ed Rev. Stat. vol. 7, p. 666*), "regulating the sale of intoxicating liquors," does not deprive a board of commissioners of excise of the right to issue an execution against the person of the defendant after the return of an execution against his property unsatisfied, on a judgment recovered prior to that act. (*Board of Commissioners of Excise of Chemung County v. Harvey*, 39 *How. Prac. R.*, 191.)

Provisions of Excise Law 1857, sec. 14, chap. 628 (above) imposing a penalty for the sale by any person except an inn-keeper who has obtained a license therefor, of "strong or spirituous liquors or wines" to be drank on the premises, was not repealed by the Act of 1870 (*Laws of 1870, chap. 175*) but by virtue of the provisions of the latter act (*Ante. sec. 8.*) declaring that the provisions of the Act of 1857, "except where the same are inconsistent," shall be taken as a part of the Act of 1870, and shall "remain in full force and effect," the said provisions of the Act of 1870 remain in full force, and is a part of the excise law of the state.

People v. Smith, 69 *N. Y. R.*, 175.

Where a statute creates a new offense, making that unlawful which was lawful before, and prescribes a particular penalty therefor, that penalty alone can be enforced; the offence is not indictable.

People v. Hislop, 77 *N. Y.*, 331.

SECTION XXVI.

Sales to Indians and minors.

SECTION 26. Section fifteen of chapter six hundred and twenty-eight of the laws of eighteen hundred and fifty-seven, entitled "An act to suppress intemperance and to regulate the sale of intoxicating liquors," is hereby amended so as to read as follows:

SECTION 15. No inn, tavern or hotel keeper, or any other person licensed to sell any strong or spirituous liquors or wines, shall either personally or by his wife, servant, employe or other agent, sell or give any such liquors or wines to any Indian or apprentice, knowing or having reason to believe him to be such, or within the knowledge of such agent, without the consent of his master or mistress, nor to any minor under the age of eighteen years, without the consent of his father or mother, or guardian. Whoever shall either personally or by his wife, servant, employe or other agent, offend against either of these provisions, shall forfeit ten dollars for each and every offence to be recovered by the master of such apprentice or servant, or by the parent or guardian of such minor; and any person who shall, either personally or by his wife, servant, employe or other agent, sell or give away any strong or spirituous liquors, ale, beer or wine to any Indian in this state, or shall sell any beer, ale, wine or any strong or spirituous liquor to any minor under the age of fourteen years, knowing or having reason to believe such minor to be under such age, shall be deemed guilty of a misdemeanor, and on conviction shall be liable to a fine of twenty-five dollars for each and every offence.

77 Ill. 322. Id. 464. Laws 1869, 1870, 1873.
Laws 1877, chap. 420.

In an action to recover the penalty provided by section 15 of the excise law of 1857 chap. 628, for the sale of spirituous liquors to a minor under the age of eighteen years, the plaintiff has the burden of showing that the defendant knew or had reason to believe that the person to whom sale was made was under the age of eighteen years. The words of the statute, "knowing or having reason to believe him to be such," apply to minors as well as to Indians and apprentices. (*Perry v. Edwards*, 44 N. Y. Rep., 223.)

Plaintiff in error was convicted of selling liquor to a minor in violation of sec. 15, chap. 628, Laws of 1857, as amended by Laws of 1877, chap. 420. The minor, a boy of ten years old, testified that he was sent to purchase the liquor by an adult, one Martin, who lived in the house with him, and who furnished the

35 Ohio St. R. 548. 53 Geo. 229. 1 Mich. Lawyer Cir. Ct. R. 30, 150 Ind. 18. Id. 594, 69 Ill. 612, 52 Ind. 486.

money to buy it; that he brought the liquor to Martin without tasting it; that subsequently, Martin gave him a drink, by reason of which he became intoxicated. *Held*, That the conviction was proper, and that the fact that the boy was acting as agent for an undisclosed principal, did not relieve the accused from the penalties imposed.

Ross v. People, 17 Hun., 591.

SECTION XXVII.

Licenses to keep taverns without including a license to sell spirituous or intoxicating liquors.

SECTION 27. Licenses to keep taverns, pursuant to the laws of this state may be granted by the commissioners of excise, in the several cities and towns of this state, or by any board or officers exercising the power of such commissioners, without including a license to sell strong or spirituous liquors, ale, wines, beer or alcoholic drink, and in all such cases the license shall express such restrictions on its face, and a fee of five dollars may be charged for granting such license and no more; but no such license shall be given until the bond required to be given by tavern-keepers is executed and delivered to said commissioners.

Laws 1877, chap. 419.

SECTION XXVIII.

Arrest of persons violating act.

Duty of magistrate before whom brought.

To issue warrants for violations upon complaints.

SECTION 28. It shall be the duty of every sheriff, under sheriff, deputy sheriff, constable, marshal, policeman or officer of police to arrest all persons actually engaged in the commission of any offense in violation of this act, and forthwith to carry such person before any magistrate of the same city or town, to be dealt with according to the provisions of this act; and it shall be the duty of such magistrate, on sufficient proof that such offense has been committed, unless such person shall elect to be tried before such magistrate, and unless the offense charged be intoxication in any public place, to require a bond to be executed by such offender

in the penal sum of one hundred dollars, with sufficient sureties, conditioned that such offender will appear and answer the charge at the next Court of Oyer and Terminer, or Sessions, to be held in said county, and abide the order and judgment of the court therein, or to committ such offender to the county jail until such judgment of said court, or until he be discharged according to law. And it shall be the duty of the magistrate to entertain any complaint of a violation of this act, made by any person under oath, and forthwith to issue a warrant and cause such offender to be brought before him to comply with the provisions of this section; and such magistrate shall, within ten days, cause such bond, together with all papers and affidavits, with a list of the persons and residences of the complainants and witnesses examined before him, to be delivered to the district attorney of the county, whose duty it shall be forthwith to prosecute the same. (*Sec. 16, chap. 628, 1857, as amended by sec. 1, chap. 856, 1869; 7 Edmonds' Rev. Stat., p. 489.*) 1870, 1873

One arrested under section 16 of the act to suppress intemperance. (*7 Edmonds' Revised Statutes, chap. 856, p. 489*) may give bail; and if he do so, cannot be coerced into a summary trial before the magistrate. (*Hill v. People, 20 N. Y. Rep., 363; Same case, 18 How. Prac. Rep., 289.*)

Under section 16, of the act of 1857, fixing the penalty of the bond to be taken where a person is arrested being found actually engaged in violating that act,—at \$100,—is not applicable to the case of one indicted under section 21 for sales, etc., on Sunday or election day, and afterwards arrested under the indictment. In the latter case the amount of bail is left to the discretion of the magistrate. (*People v. Page, 3 Parker Crim. Rep., 600.*)

Violations of this section are not punished summarily before a magistrate, unless the accused elects to be thus tried. The act gives the right, under section 16, 1857, to give bail, and to be tried only on indictment. *People v. Putnam 3 Parker's Crim. Rep., 386.*)

SECTION XXIX.

Arrests for public intoxication.

Duty of magistrate.

Punishment by fine and imprisonment.

Penalty for neglect of duty, by officers and magistrates.

SECTION 29. It shall be duty of every such officer, whenever he shall find any person intoxicated in any public place, to apprehend such person and take him before some magistrate of the

same city or town, and if such magistrate shall, after due examination, deem him too much intoxicated to be examined, or to answer on oath correctly, he shall direct said officer to keep him in some jail, lock-up or other safe and convenient place until he shall become sober, and thereupon forthwith to bring him before said magistrate, whose duty it shall then be forthwith to try him for such offense; and such person, when thus charged with intoxication in any public place, shall not be allowed his election to give a bond, as provided for in section 16 (*see ante, sec. 28*), of this act, for his appearance before the next court of Oyer and Terminer or Sessions, and, upon his conviction by the magistrate of such offense, such person shall be fined not less than three nor more than ten dollars, in the discretion of the magistrate trying him, and costs at the same rate as in courts of special sessions, and imprisonment in the county jail, work-house or penitentiary, until paid, not however, less than ten days nor to exceed six months. The offense of intoxication in any public place being hereby declared an offense against the provisions of this act, and punishable as above provided, it shall be the duties of such officers to arrest or cause to be arrested, all such persons when so intoxicated, and of the magistrate to entertain such complaints and make such examination under the penalty of fifty dollars, with full costs of suit, for any neglect to comply with the provisions of this section. (*Sec. 17, chap. 628, 1857, as amended by sec. 2, chap. 853, 1869.*)

46 Vt., 374.

It is no defense to one of two persons, indicted for selling liquor in violation of laws that he did the acts complained of as a clerk of the other defendant, and by his direction, there being no allegation that the illegal acts were done by compulsion. (*French v. People, 3 Parker's Criminal Reports, 114.*)

A person accused of selling intoxicating liquors, in violation of law, is entitled to a trial by jury.

People ex rel. Killeen v. Baird, City Judge of Yonkers, 11 Hun., 289.

A statute making intoxication in a public place a criminal offence, the accused cannot be deprived of the right of trial by jury.

Id.

Hill v. People, 29 N. Y., 263.

SECTION XXX.

Metropolitan police district excepted.

SECTION 30. Nothing in this act contained shall apply to the metropolitan police district. (*Sec. 3, chap. 856, 1869.*)

SECTION XXXI.

Act to apply to sale of ale and beer.

License therefor.

Metropolitan police district excepted.

SECTION 31. All the provisions of this act, as amended, shall be held to apply to the sale of ale or beer, except so much thereof as forbid the granting of license to any person, except to such persons as propose to keep an inn, tavern or hotel; and the commissioners of excise may, in their discretion, grant license for the sale of ale or beer for a sum not less than ten dollars to other than those who propose to keep an inn, tavern or hotel; and the provisions of this act shall extend to all portions of the state, except the Metropolitan police district. (*Sec. 4, chap. 856, 1869; 7 Edmonds' Rev. Stat., p. 490.*)

Lager beer falls within the term "intoxicating liquors," if the use of it is ordinarily or commonly attended with entire or partial intoxication, which is a question of fact for the jury (*People v Zeiger, 6 Parker's Crim. Rep., 355.*)

Rau v. People, 63 N. Y. R., 277.

SECTION XXXII.

Not to sell to drunken persons.

SECTION 32. Whoever shall sell or give away any strong or spirituous liquors or wines, or shall suffer any such liquors or wines to be sold or given away under his direction or authority, to any intoxicated person, shall forfeit not less than ten or more than twenty-five dollars for each offense. (*Sec. 18, chap. 628, 1857.*)

50 Ind. 22; 90 Ills. 59.

The offense of selling liquor to an intoxicated person created by the excise law of 1857 (*sec. 18, chap. 628*), was not indictable and punishable as a misdemeanor.

People v. Hislop, 77 N. Y., 331.

Foote v. People, 56 N. Y., 322.

People v. Stevens, 13 Wend., 341.

Lane v. Brown, 16 Wend., 561.

People *ex rel.*, Hislop v. Cowles, County Judge, etc., 16 Hun., 577.

He is subject only to a fine of not less than ten nor more than twenty-five dollars.

Id.

SECTION XXXIII.

Duty of magistrates and overseers of the poor.

SECTION 33. It shall be the duty of the magistrates and overseers of the poor, in any town or city, on complaint and satisfactory proof by a wife, that her husband is an habitual drinker of intoxicating liquors, to issue written notices to all dealers in intoxicating liquors against whom such complaint is made, forbidding the sale or giving of such liquor to such husband for the term of six months from the date of the notice, under a penalty of fifty dollars, with costs, for each and every sale or giving of such liquor, after such notice shall have been given, to be sued for in her own name, and for her own use. It shall be the duty of such magistrates and overseers of the poor to forbid the sale in like manner in all cases, when a husband shall make like satisfactory proof concerning the wife, and all the provisions of this section shall apply the same in either case. It shall be the duty of the magistrates and overseers of the poor, when like proof is made by a parent concerning a child, who is a minor, under the age of twenty-one years; or, by a child concerning a parent, to forbid the sale in like manner; and all the provisions of this act shall apply as in other cases named above. (*Sec. 19, chap. 628, 1857.*)

It is no defense to an action against a husband for selling liquor in violation of the statute, that his wife owns the tavern where it was sold, and that he sold as her agent, unless there is proof that she had a license. (*Board of Commissioners of Excise of Orange County v. Dougherty, 55 Barb., p. 332.*)

SECTION XXXIV.

Not to sell to habitual drunkards and paupers.

SECTION 34. It shall not be lawful, under the provisions of this act, to sell intoxicating liquors to any person guilty of habitual drunkenness, nor to any person against whom the seller may have been notified by parent, guardian, husband or wife from selling intoxicating liquors; and every party so selling or retailing intoxicating liquors shall, on proof thereof, before any court of competent jurisdiction, be deprived of his license to sell, and

shall not be allowed a renewal of said license, and, in addition, on conviction, shall be punished by a fine of not less than twenty dollars, nor more than fifty dollars for each and every violation of the provisions herein set forth. If any inn, tavern or hotel-keeper, or any other person or persons whatsoever, knowingly (outside of any poor house), shall sell or give to any pauper or inmate of any poor house or alms house strong or spirituous liquors or wines, such person or persons so offending shall be fined twenty-five dollars and be guilty of a misdemeanor, and on conviction shall be imprisoned not more than sixty days. (*Sec. 20, chap. 628, 1857.*)

25 Ohio St. R. 584; 50 Ind. 22.

On an indictment for selling liquor, if defendant puts in evidence a license granted in a specified town, it may be shown in answer that he was not a resident of the town in which he obtained the license. The commissioners do not acquire a jurisdiction over non-residents by their own act in asserting it. (*People v. Davis, 36 N. Y. Rep., 77; Same Case, 32 How. Prac. Rep., 442.*)

25 Ohio St. R. 381.

SECTION XXXV.

Days upon which sales of liquors prohibited.

~ SECTION 35. No inn, tavern or hotel-keeper, or other person, shall sell or give away intoxicating liquors or wines on Sunday* or upon any day on which a general or special election or town meeting shall be held, and within one-quarter of a mile from the place where such general or special election or town meeting shall be held, in any of the villages, cities or towns of this state, to any person whatever as a beverage. In case the election or town meetings shall not be general throughout the state, the provisions of this section in such case shall only apply to the city, county, village, or town in which such election or town meeting shall be held. Whoever shall offend against the provisions of this section shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than thirty dollars, nor more than two hundred dollars, or by imprisonment not less than five days, nor more than fifty days, or both such

fine and imprisonment at the discretion of the court. (*Sec 21, chap 628, 1857, as amended by sec. 5, chap. 549, 1873.*)

Anti. 21.

In order to warrant a conviction of a licensed tavern keeper under L. 1857, chap. 628, for selling liquor at his bar on Sunday, proof must be made of an *intent*, on defendant's part to violate the statute. (*People v. Utter, 44 Barb., 170.*)

33 Mich. 279.

Where sale is not made by defendant personally, or in his presence, the presumption of his innocence is not overcome by merely showing that the sale was made on his premises, by the bartender, unless evidence also shows that defendant in some manner participated in it, connived at it, or assented to it. (*Id.*)

The question whether he assented, is one of fact, and not of legal presumption, and belongs to the jury. (*Id.*)

A local municipal ordinance, that "no person shall sell or give any spirituous or intoxicating liquors within the bounds of the village upon the Sabbath day under penalty of a fine of twenty-five dollars," is not inconsistent with the act of 1857, which imposes, by section 13, chap. 628, 1857, a penalty of fifty dollars for selling less than five gallons without license, and, by section 14, a similar penalty for selling any quantity to be drunk on the seller's premises, and, by section 21, makes it a misdemeanor to sell or give away any intoxicating liquors on Sunday. All these laws may well stand together; and if an offense is covered by both, the penalties are cumulative. (*Village of Cohoes v. Moran, 25 How. Prac. R., 385.*)

SECTION XXXVI.

Penalties how recovered.

SECTION 36. Section twenty-two of chapter six hundred and twenty-eight of the laws of eighteen hundred and fifty-seven, entitled "An act to suppress intemperance, and to regulate the sale of intoxicating liquors" is hereby amended so as to read as follows:

§ 22. The penalties imposed by this act, except the penalties provided for by section fifteen and nineteen, shall be sued for, and recovered by and in the name of the overseers of the poor of the town or city in which the alleged penalty is incurred, except in such towns or cities as have no overseers of the poor, in which case said penalties shall be sued for, and recovered by and in the

name of the board of commissioners of excise of the town or city aforesaid and paid over to the treasury of the county for the support of the poor of the town or city in which such penalty was incurred, except that in counties where there is no distinction between town and county poor, then for the poor of such county, within thirty days after receipt of the same by such commissioners, overseers or their attorneys.

Laws 1878, chap. 109, amending Laws, 1857, chap. 628, section 22.
3 N. Y. Supreme Ct. R., 782.

The county commissioners of excise, under the excise act of 1857, are superseded by the town commissioners authorized by the excise act of 1870, and are by that act removed from office and deprived not only of the power to grant licenses, but to prosecute for penalties or perform any other duty as commissioners. (*Board of Excise v. Garlinghouse*, 45 N. Y. Rep., 249.)

Actions for penalties commenced by the county commissioners before the passage of the act of 1870 are not thereby abated, but may be continued by the town commissioners, who may be substituted as their successors in office, within their respective localities; and until such substitution the action will proceed in the name of the original parties. (*Id.*)

Effect of penal clauses, *Foote v. People*, 56 N. Y., 321.

SECTION XXXVII.

Bonds to be filed.

SECTION 37. Every bond taken pursuant to the provisions of this act, shall, within ten days after the execution of the same, be filed in the office of the clerk of the town or village in which the license shall be granted, and in cities, in the city clerk's office. (*Sec. 23, chap. 628, 1857.*)

SECTION XXXVIII.

Breach of bonds, by whom to be sued.

SECTION 38. Whenever a breach of the condition of such bond given upon the granting of any license, shall happen, it shall be the duty of the commissioners of excise, the supervisor of the town, mayor of the city or trustees of the village, in which the person who shall incur the penalty, shall reside, to prosecute the same and recover the penalty therefor. (*Sec. chap. 628, 1857.*)

It is not necessary, in an indictment for the unlawful sale of spirituous liquors, to name the particular person to whom the sale was made. (*Osgood v. The People*, 39 *N. Y.*, [12 *Tiffany*], 449.)

A count, in an indictment for unlawfully selling strong and spirituous liquors without license, which charges that the defendant on a specified day, and on divers other days between that day and the day of finding the indictment, sold by retail to divers citizens of this state and to divers persons, to the jurors unknown, strong and spirituous liquors, does not charge several distinct offenses, nor is it bad for uncertainty or duplicity. (*Id.*)

SECTION XXXIX.

Conviction for violation either in a suit for penalty, or in suit upon bond.

SECTION 39. Whenever any conviction or judgment shall be obtained against any person licensed to sell strong or spirituous liquors or wines, for any violation of the provisions of this act, either in a suit for a penalty, or in a suit upon a bond given by such person, it shall be the duty of the justice or court before whom the same shall be had, to transmit to the next court of sessions of the county, a statement of such conviction or judgment, and the offence for which it was obtained. (*Sec. 25, chap. 628, 1857.*)

Service of notice of appeal, on one member of the board of commissioners of excise of a county, is not service on the board. Any number of the members less than the whole do not constitute the board of excise; and a service of papers on a board of excise must be on every member thereof, to confer jurisdiction upon the appellate court to hear the appeal. A board of excise, like overseers of the poor, commissioners of highways, etc., is not an artificial body, like a corporation, but a *quasi* corporation only. (*Metcalf v. Garlinghouse*, 40 *How. Prac. R.*, 50.)

SECTION XL.

Revoking of license.

SECTION 40. The said court shall cause the person or persons against whom such conviction or judgment was obtained to be

notified to appear on such day as the court may appoint, to show cause why any such license that may have been granted to him or them should not be revoked. At the day appointed, and on such other days as the court shall appoint, it shall proceed to inquire into the circumstances, and shall revoke the license granted to the person or persons violating the provisions of this act. (*Sec. 26, chap. 628, 1857.*)

59 N. Y. 92; 5 Hun. 25; 30 Mich. 492.

SECTION XLI.

Effect of revocation of license.

SECTION 41. The persons whose license shall be revoked shall be incapable of receiving any such license to sell strong or spirituous liquors or wines for the space of three years from the time of such revocation. (*Sec. 27, chap. 628, 1867.*)

Section 28, chap. 628, 1857, is omitted. (*See sec. 54, Civil Damage Bill; Laws of N. Y., chap. 646; Laws of 1873.*)

59 N. Y. 92.

SECTION XLII.

Duty of courts to instruct grand jurors.

SECTION 42. It shall be the duty of courts to instruct grand jurors to inquire into all offenses against the provisions of this act, and present all offenders under this act, and also all persons who may be charged with adulterating imported or other intoxicating liquors with poisonous or deleterious drugs or mixtures, or selling the same, or with knowingly importing or selling intoxicating liquors or wines adulterated with poisonous or deleterious drugs or mixtures; which offences are hereby declared to be misdemeanors, to be punished by imprisonment in the penitentiary, work-house or jail for a period of three months, and by a fine of one hundred dollars. (*Sec. 29, chap. 628, 1857.*)

56 N. Y. 321.

SECTION XLIII.

Who may prosecute for any penalty.

SECTION 43. In case the parties or persons whose duty it is to prosecute for any penalty imposed for any violation of the provisions of this act shall, for the period of ten days after complaint to them that any person has incurred such penalty, accompanied with reasonable proof of the same, neglect or refuse to prosecute, for such penalty, any other person may prosecute therefor, in the name of the overseers of the poor of the town in which said alleged penalty was incurred, and in the manner provided by section 22 of this act as the same is amended by section 1 of this chapter. (Sec. 30, chap. 628, 1857, as amended by sec. 2, chap. 820, 1873.)

Although it may be necessary that all the commissioners, or at least that a majority, after all are notified, should meet to decide to sue for a penalty; yet it is not necessary that this be shown affirmatively. It will be presumed, unless defendant clearly shows the contrary. (*Board of Excise of Saratoga County v. Doherty*, 16 How. Prac. Rep., 46; see 21 Wend., 178.)

inhabitants 8 Hun. 283; 13 Barb. 414. *30 Abs. R. 52*
by Where one of the board has instituted proceedings, and the consent of the other members can be presumed, the proceedings will be sustained. (*Board of Excise v. Sackriuer*, 35 New York Rep., 154.)

SECTION XLIV.

Employment of intemperate persons by incorporated companies.

SECTION 44. All incorporated companies and persons in this state engaged in conveying passengers, including especially all railroad, steamboat and ferry companies, and all kinds of corporations conveying, for hire, persons or property, shall be and hereby are required to refuse employment to all persons who, on good and sufficient proof, shall be shown to indulge in the intemperate use of intoxicating drinks; and any such company which shall retain in its employ any person or persons who shall, on competent proof, be shown to be intoxicated at any period while in the active service of said company or person, either as engineer, conductor, fireman, switch-tender, commander, pilot, mate or foreman, or be in any way connected with the moving power or management, or whose duty, if neglected, would diminish the safety and security of life, limb or property intrusted

hereto, said company or corporation shall be liable to pay a sum of not less than fifty dollars, nor no more than one hundred dollars, to the county treasurer in the county where the offense may be committed and proved, before any court of competent jurisdiction. (*Sec. 31, chap 628, 1857.*)

SECTION XLV.

No jail limits for defendants.

SECTION 45. In any judgment rendered or recovered on any bond to be given under this act, or for any penalty incurred under this act, the person or persons against whom such judgment shall be rendered shall not be entitled, under any execution issued on such judgment, to the liberties of the jail. (*Sec. 32, chap. 628, 1857.*)

SECTION XLVI.

Repeal.

SECTION 46. Title 9 of chap. 20 of the first part of the Revised Statutes, and the act entitled "An act for the prevention of intemperance, pauperism and crime," passed April 9th, 1855, and all other acts inconsistent with the provisions of this act, are hereby repealed. (*Sec. 33, chap. 628, 1857.*)

SECTION XLVII.

Punishment for intoxication of railroad employees.

SECTION 47. If any person employed or who shall be employed upon the railroad of any such corporation as engineer, conductor, baggagemaster, brakeman, switchman, fireman, bridge tender, flagman, signalman, or having charge of the regulating or running of trains upon said railroad in any manner whatsoever, be intoxicated while engaged in the discharge of such duties, he shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punishable for each offence by a fine not

exceeding one hundred dollars, or by imprisonment in a county jail for a term not exceeding six months, in the discretion of the court having cognizance of the offense. And if any person so employed, as aforesaid, by any such corporation shall, by reason of such intoxication, do any act or neglect any duty, which act or neglect shall cause the death or injury to any person or persons, he shall, upon conviction thereof, be punishable by imprisonment in the county jail for a term of not less than six months, or in the state prison for a term not exceeding five years, in the discretion of the court having cognizance of the offense. (*Laws of 1871, chap. 560; sec. 4, amending sec. 41, chap. 140, Laws 1850; Edmonds' Rev. Stat., vol. 3, p. 635.*)

SECTION XLVIII.

To suppress intemperance in Westchester County.

SECTION 48. There shall be appointed on the second Tuesday of May next, by the county judge of Westchester county, three reputable freeholders, residents of said county who shall be commissioners of excise in and for said county, and shall be known as the board of commissioners of excise of the county of Westchester. The said county judge shall divide the said commissioners into three classes by lot. The commissioner assigned to the first class shall hold his office until the first day of January, eighteen hundred and seventy-seven, the commissioner in the second class until the first day of January, eighteen hundred and seventy-nine, and the commissioner in the third class until the first day of January, eighteen hundred and eighty-one; and one commissioner in every two years hereafter as the term of office shall expire, shall be appointed on the second Tuesday of May in each year by said county judge, who shall hold his office for six years from the first day of January following his appointment. In case of vacancy by death or otherwise in the board of commissioners, such vacancy shall be filled by the said judge for the unexpired term of such commissioner. Every commissioner before he shall enter upon his duties shall take and subscribe the oath prescribed by section one article twelve of the Constitution, and shall be entitled to receive the sum of five dollars per day for services actually performed, to be allowed and paid in like manner as other county charges, and no other or greater compensation shall be allowed.

SEC. 2. The said commissioners of excise shall meet at the place where the county court is required to be held on the third Tuesday in May in each year, and on such other days as the majority of the commissioners shall appoint, not exceeding twenty-five days in any one year, for the purpose of granting licenses as hereinafter provided. They shall have power to grant licenses to keepers of inns, taverns, hotels or restaurants being residents of the town or city where such inn, tavern, hotel or restaurant is proposed to be kept to sell strong and spirituous liquors and wines to be drank in their houses respectively; and to store-keepers or druggists being such residents, a license to sell such liquors and wines in quantities less than five gallons, but not to be drank in their shops, houses, out-houses, yards or gardens; and they shall have power to determine the sum to be paid for a license by each person applying, which sum shall be not less than thirty dollars nor more than one hundred dollars, except in case of druggists, which shall be not less than ten dollars. It shall not be lawful for druggists having such licenses to sell strong and spirituous liquors, except upon the prescription of a practicing physician.

SEC. 3. All licenses shall be signed by the commissioners or a majority of them, granting the same. They shall not be issued until the requirements fixed by the board shall have been complied with. When issued they shall be in force unless revoked until ten days after the third Tuesday of May next succeeding the granting of such license.

SEC. 4. It shall be the duty of all courts of said county, having criminal jurisdiction, to instruct grand jurors to inquire into all offenses against the provisions of this act, and to prevent all offenders under this act, and also all persons who may be charged with adulterating imported or other intoxicating liquors with poisonous or deleterious drugs or mixtures, or selling the same, or with knowingly importing or selling intoxicating liquors or wines adulterated with poisonous or deleterious drugs or mixtures, which offences are hereby declared to be misdemeanors, to be punished by imprisonment in the county jail of said county for a period not exceeding three months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

SEC. 5. The provisions of the act entitled "An act to suppress intemperance and to regulate the sale of intoxicating liquors," passed April sixteenth, eighteen hundred and fifty-seven, except were the same are inconsistent or in conflict with the provisions of this act, shall be taken and construed as a part of this act, and

be and remain in full force and effect in the said county of Westchester, and every part thereof.

SEC. 6. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 7. This act shall take effect immediately.

Laws 1874, chap. 327.

SECTION XLIX.

Moneys from licenses and fines within the village of Monticello to be paid to the treasurer.

SECTION 49. All moneys derived from the granting of licenses for the sale of intoxicating liquors and from the collection of fines for intoxication, within the village of Monticello, shall be paid over to the treasurer of, and for the use of said village; and the said fines and licenses may be sued for and collected in the name of the president and trustees of the village of Monticello.

Laws 1874, chap. 38.

SECTION L.

An act providing for the disposition of excise moneys in the several towns of Orange county, except the city and town of Newburgh.

Passed June 7, 1875; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The commissioners of excise of the several towns and villages in Orange county (except the city and town of Newburgh), shall pay over to the supervisor of the town, within thirty days after the receipt thereof, all moneys received by them as excise commissioners. Such moneys shall be paid by the supervisor to the overseers of the poor of the town in such sums and at such times as may be needed for the temporary relief of the poor of the town, as may be directed by the town board.

SECTION 2. This act shall take effect immediately.

Laws 1875, chap. 533.

SECTION LI.

An act to regulate the use of intoxicating liquors in poor-houses, juvenile reformatories, protectories, houses of refuge, jails, penitentiaries and prisons.

Passed May 27, 1880; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

SECTION 1. It shall be unlawful to introduce into any poor-house, juvenile reformatory, protectory, house of refuge, jail, penitentiary or prison, or to bring upon the premises thereof, any wine, alcoholic, malt or intoxicating liquors, except upon the written requisition of the medical officer of such institution, or for any trustee, manager, officer, agent, employee, or other person connected with any such institution, or the inmates thereof, to use, to offer to others, or to allow to be used within any such institution, or upon the premises thereof, any wine, alcoholic, malt or intoxicating liquors, except by the direction and prescription of the medical officer of such institution, who shall, in every case of such prescription, make a record of the name of the person and the cause for which such prescription is given, in a book kept publicly for such purpose, which record shall be verified by the affidavit of such medical officer, at least once in every six months.

SECTION 2. Any person violating this act, upon conviction thereof, shall be deemed guilty of a misdemeanor.

SECTION 3. This act shall take effect immediately.

Laws 1880, chap. 429.

SECTION LII.

Children not to be admitted to saloons, etc.

Penalty.

SECTION 1. No minor under the age of fourteen years shall be admitted at any time to, or permitted to remain in any saloon or place of entertainment where any spirituous liquors or wines or intoxicating or malt liquors are sold, exchanged or given away, or at places of amusement known as dance-houses and concert-saloons, unless accompanied by parent or guardian. Any proprietor, keeper or manager of any such place, who shall admit

such minor to, or permit him or her to remain in any such place, unless accompanied by parent or guardian, shall be guilty of a misdemeanor.

Laws 1877, chap. 428, sec. 1.

SECTION LIII.

Sales of liquor in court house.

Penalty.

SECTION 53. No spirituous liquor shall, on any pretence whatever, be sold within any building established as a court house for the holding of courts of record, while any such court or any circuit court shall be sitting therein.

2 Rev. Stat. 291, part 3, chap. 3, title 2, sec. 95; 2 Ed. Rev. Stat., p. 302, sec. 95, as amended by Laws 1877, chap. 416.

Any person violating the provisions of the last section, shall be deemed guilty of a misdemeanor.

Id., sec. 96.

SECTION LIV.

Civil damage bill.

Persons injured may maintain action against seller, etc.

Jurisdiction of justices of the peace.

SECTION 54. Every husband, wife, child, parent, guardian, employer or other person who shall be injured in person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her name against any person or persons who shall, by selling or giving away intoxicating liquors, cause the intoxication, in whole or in part, of such person or persons, and any person or persons owning* or renting or permitting the occupation of any building or premises, and having knowledge that intoxicating liquors are to be sold therein, shall be liable, severally or jointly with the person or persons selling or giving intoxicating liquors aforesaid, for all damages sustained and for exemplary damages; and all damages recovered by a minor under this act

* 27 Ohio, 669.

shall be paid either to such minor or to his or her parent, guardian or next friend, as the court shall direct; and the unlawful sale or giving away of intoxicating liquors shall work a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises.

7 SEC. 2. In any action arising for violations of the provisions
42 of this act, any justice of the peace in the county where the
offense is committed shall have jurisdiction to try and determine the same, providing the amount of damages claimed does not exceed \$200, in which case, and where the damages claimed do not exceed \$500, the justice of the peace before whom the action is commenced shall associate with himself any other two justices of the peace in the same county, who shall have jurisdiction to try and determine the same. (*General Statutes of New York*, 1873, chap. 656.)

The act constitutional, *Baker v. Pope*, 2 Hun., 556.

Effect of act as to precedent licenses and sales, *Dubois v. Miller*, 5 Hun., 332.

Death caused by intoxication.

Hayes v. Phelan, 4 Hun., 733.

Widow's action for death of husband, joinder of defendants under civil damage act.

Jackson v. Brookins, 5 Hun., 530.

Complaint under civil damage act.

Id.

Volans v. Owens, 9 Hun., 558.

Right of action under and for damages.

Franklin v. Schermerhorn, 8 Hun., 112.

For death, *Quain v. Russell*, 8 Hun., 319.

An action may be brought against the owner of premises jointly with the person selling, or severally.

Bertholf v. O'Reilly, 8 Hun., 16.

Employers are liable for the act of a barkeeper who supplies liquors without their knowledge, and against their instructions.

Smith v. Reynolds, 8 Hun., 128.

An action is maintainable under the civil damage act by a wife to recover damages for loss of means of support, in consequence of the intoxication of her husband.

Hill v. Berry, 75 N. Y. Rep., 229.
33 Wisc. 570; 28 Mich. 496.

Civil damage act constitutional and valid.

Bertholf v. O'Reilly, 74 N. Y. Rep., 500.
Baker v. Pope, 2 Hun., 556.

In case of a husband having a wife and family dependent on him for support, who by reason of intoxication becomes incapacitated to labor and neglects to provide for them so dependent, or squanders his substance, reducing them to penury and want, is within this act.

Volans v. Owen, 74 N. Y. Rep., 527.

Recovery of damages against owner of building where liquors are sold, the permission or knowledge of the owner must be presumed or inferred.

Franklin v. Schermerhorn, 8 Hun., 112.

Contributory negligence.

Bertholf v. O'Reilly, 8 Hun., 112.
Same case, 74 N. Y. R., 500.

Exemplary damages and distribution of damages among parties entitled to sue.

Id.

Joint action against landlord and tenant will lie.

Bertholf v. O'Reilly, 8 Hun.
Same case, 74 N. Y. R., 500.

A complaint alleging that the defendant sold intoxicating liquors to plaintiff's husband, intoxicating him and rendering him incapable of labor and of supporting the plaintiff, and so injuring him as to cause death and that by reason of his death plaintiff had been injured in property and means of support to the amount of \$5,000, does not state a cause of action under the civil damage act.

Brookmire v. Monaghan, 15 Hun., 16.
Hayes v. Phelan, 4 Hun., 733.

In an action brought by a married woman to recover damages under civil damage act, the complaint alleged that the defendant, Crawford, resides in one village, and the defendant, Hoag, in

another; that on May 20, 1875, "the defendants wrongfully, conspiring and intending to injure said plaintiff, at their places of residence aforesaid, gave and sold intoxicating liquors to the plaintiff's husband, * * * which he drank," and that in consequence thereof he became intoxicated, and killed a horse belonging to plaintiff, to which complaint the defendants separately interposed general denials. *Held*: That even if the allegations as to a conspiracy were rejected as surplusage, the complaint charged a joint sale, and that it was not sustained by proof of separate sales by each defendant, at his place of residence.

Morenus v. Crawford et al., 15 Hun., 45.

Defendant sold liquor to the son-in-law of plaintiff, who became intoxicated thereby; and in consequence thereof, drove a team, behind which he and plaintiff's wife were riding, so recklessly as to upset the wagon, and break the wife's arm. In an action by the husband to recover for the loss of her services, and the expenses of medical attendance, nursing, etc., *held*, that he was entitled to recover.

Aldrich v. Sager. 9 Hun., 587.

In an action under the civil damage act for injury to means of support in consequence of intoxication, which caused the death of the intoxicated person, damages resulting from the death cannot be recovered.

Davis v. Justice, 31 Ohio R., 359.

Shagart v. Egan, 83 Illinois Rep., 50.

25 American R., 359.

Craig v. Swinerton, 8 Hun., 145.

3 Weekly Dig. 154; 8 id. 112; 48 Verm. 628; 1 West. Law Month. 391; 42 Iowa, 143; 26 Ohio State R. 259; 56 N. H. 74; 53 Ind. 517; 71 Ills. 241; Id. 274; Id. 632; 72 Id. 133; Id. 541; 80 Id. 283; 53 Ind. 599; 81 Ills. 213; Id. 435; 49 Ind. 441; Id. 461; 76 Ills. 222; Id. 331; 25 Ohio State 103; Id. 352; 32 Mich. 89; 50 Ind. 405; 77 Ills. 109; Id. 381, 388, 593; 48 How. 144; 5 N. Y. Supr. Ct. R. 102; 11 Alb. L. J. 95; 53 N. H. 614; 7 Chicago Leg. News, 340; 35 Wisc. 80; 39 Iowa, 670; 36 Wisc. 344; 54 N. H. 117; 47 Verm. 537; 38 Iowa, 398; Id. 465; Id. 486; 17 N. C. C. R. 126; 27 Rec. of B. 438; 27 N. C. C. Pl. 98.

A wife has an interest in her husband's capacity to perform labor as a means of support; and she may prosecute an action for damages resulting to her from the deprivation of such means of support, in consequence of the intoxication of her husband, against any person who caused such intoxication by selling to him intoxicating liquors in violation of said statute. (*Schneider v. Hosier*, 21 Ohio St. Rep., 98; 33 Wise, 570; 28 Mich., 496.)

An action for injuries sustained by a wife, in her person, or property or means of support, may be commenced after the death of the husband. (*Id.*)

In actions under said section, in which the plaintiff shows a right to recover damages actually sustained, the jury may also assess exemplary damages without proof of actual malice or other special circumstances of aggravation. (*Id.*)

SECTION LV.

No liquors allowed in any room or building used for polling or registry purposes.

In cities and incorporated villages, no building or part of a building shall be designated as a registry or polling place in which, or any part of which, spirituous or intoxicating liquors are sold.

Laws 1872, chap. 570, sec. 16.

No lager beer, ale, wine or spirituous liquors shall be allowed on election day in any room used for election purposes.

Laws 1880, chap. 56, sec. 17.

SECTION LVI.

AN ACT to Define some of the Rights and Responsibilities of Landlords and Tenants.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Whenever the lessee or occupant, other than the owner, of any building or premises shall use or occupy the same, or any part thereof, for any illegal trade, manufacture or other business, the lease or agreement for the letting or occupancy of such building or premises shall thereupon become void, and the landlord of such lessee or occupant may enter upon the premises so let or occupied, and shall have the same remedies to secure possession thereof as are given by law in the case of a tenant holding over after the expiration of his lease.

SEC. 2. The owner or owners of any buildings or premises knowingly leasing or giving possession of the same to be used or occupied, in whole or in part for any illegal trade, manufacture or business, or knowingly permitting the same to be used for any illegal trade, manufacture or business, shall be jointly and severally with the tenant or tenants, occupant or occupants, for any damage that may result by reason of such illegal use, occupancy, trade, manufacture or business.

SEC. 3. This act shall take effect immediately.

Laws 1873, chap. 583.

APPENDIX.

FORMS.

No. 1.

APPLICATION FOR INNKEEPER'S LICENSE.

TO THE BOARD OF COMMISSIONERS OF EXCISE

in and for the _____ of _____ County

The undersigned *applicant* for License, respectfully *represnt* that
desire to sell and dispose of STRONG AND SPIRITU-
OUS LIQUORS, WINES, ALE AND BEER, in quantities less than five gallons at
a time, to be drank on the premises at _____ of _____ County
of _____ that _____ *propose* to keep an Inn, Tavern or Hotel
thereat; that _____ the *only person* interested in the business to
authorize which the license shall be used.

Dated 18

(Signed,)

County of _____, ss:

being sworn *say* the foregoing application by *h*
subscribed is true.

Subscribed and sworn to before me, }
 this day of 18 }

No. 2.

APPLICATION FOR STORE-KEEPER'S LICENSE.

TO THE BOARD OF COMMISSIONERS OF EXCISE

of the The undersigned respectfully *represent* that
desirous to sell and dispose of strong and spirituous liquors, wines, ale
and beer in quantities less than five gallons at a time at in
the of but not to be drank on the said premises,
nor in the house or shop of the undersigned, or in any out-house or yard
or garden appertaining thereto or connected therewith.

And therefore who the only *person* to be interested
in said business, *pray* that a license may be granted to the undersigned
for the purpose aforesaid, on paying such lawful license fee as
may be required in the premises.

Dated 18

No. 3.

APPLICATION FOR LICENSE TO SELL ALE AND BEER.

TO THE BOARD OF COMMISSIONERS OF EXCISE

in and for the of County of
The undersigned, *applicant* for License, respectfully *represent* that
desirous to sell and dispose of ALE and BEER in quantities
less than five gallons at a time, to be drank on the premises, at
of county of and pray on own behalf,
as the only *person* intended to be interested in the business aforesaid
that may have a license as above stated, pursuant to law,
upon paying such license fee as may be lawfully required in the premises.

Dated 18

(Signed.)

No. 4.

BOND OF INN-KEEPER.

KNOW ALL MEN BY THESE PRESENTS, That we,
of the of county of and State of New
York, are held and firmly bound unto the People of the State of New
York, in the penal sum of Two HUNDRED AND FIFTY DOLLARS, to be paid

to the said People ; for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the day of of
one thousand eight hundred and

WHEREAS, The said intend keeping an Inn, Tavern or Hotel,
at in the said and is an applicant to the Board of
Commissioners of Excise of for a License to sell Strong and
Spirituos Liquors and Wines, to be drank in the said Inn, Tavern or
Hotel, to be kept as aforesaid, pursuant to the provisions of an act
entitled: "An Act regulating the sale of intoxicating liquors," passed
April 11th, 1870.

Now, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if
the said during the time that he shall keep such Inn, Tavern
or Hotel, will not suffer it to be disorderly, or suffer any gambling, keep a
gambling table of any description within the Inn, Tavern or Hotel so kept
by him, or in any out-house, yard or garden belonging thereto, then this
obligation to be void ; else to remain in force,

Signed, Sealed and Delivered }
in Presence of }

County of ss :

On this day of A. D. 18 before me personally
came to me known to be the individuals described in and who
executed the foregoing Bond, and severally acknowledged that they exe-
cuted the same for the uses and purposes therein mentioned.

County of ss :

of the in said county, being duly sworn, each for himself, doth

depose and say, that he is worth the sum of five hundred dollars above
all just debts and liabilities, and the deponents reside in the
county of and State aforesaid.

Sworn to before me, this }
day of 18 }

We, the undersigned, Commissioners of Excise of do hereby
approve of the security to the above bond.

Dated at this day of 18

KNOW ALL MEN BY THESE PRESENTS, that we,
of county of and state of New York, are held and firmly
bound unto the People of the State of New York, in the sum of five
hundred dollars, to be paid to the said People; for which payment, well
and truly to be made, we bind ourselves, our and each of our heirs, execu-
tors and administrators, jointly and severally, by these presents.

WHEREAS, the said _____ is an applicant to the Board of Commissioners of Excise of the _____ for a license to sell strong and spirituous liquors, wines, ale and beer, as a store-keeper, pursuant to the provisions of an act entitled "An act to suppress intemperance and regulating the sale of intoxicating liquors," passed April 16, 1857, and the acts passed in addition and subsequently thereto.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said during the time he shall keep any store, will not, during the term for which such license shall be granted, suffer his place of business to become disorderly, and will not sell or suffer to be sold any strong or spirituous liquors, or wines, ale or beer, to be drank at said premises, or in his shop, or house, or in any out-house, yard or garden appertaining thereto, and that will not suffer any such liquors sold by virtue of such license to be drank in his shop or house, or in any out-house, yard or garden belonging thereto, then this obligation to be void, else to remain in force.

Signed, sealed and delivered }
in the presence of }

County of ss:

On this day of A. D., 18 , before me personally came , to me known to be the individuals described in and who executed the foregoing Bond, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

County of ss:

of the in said county, being duly sworn, each for himself, doth
depose and say, that he is worth the sum of five hundred dollars above all
just debts and liabilities, and that deponents reside in the county
of and State aforesaid.

Subscribed and sworn to, before me, }
 this day of 18 . }

We, the undersigned, the Board of Commissioners of Excise of
do hereby approve of the security to the above bond.

Dated at this day of 18 .

Commissioners
of Excise.

No. 6.

BOND FOR SALE OF ALE AND BEER.

KNOW ALL MEN BY THESE PRESENTS, that we,
of County of and State of New York, are held and
firmly bound unto the People of the State of New York, in the penal sum
of two hundred and fifty dollars, to be paid to the said People; for which
payment, well and truly to be made, we bind ourselves, our and each of
our heirs, executors and administrators, jointly and severally, firmly by
these presents.

Sealed with our seals, dated the day of one thousand
eight hundred and

WHEREAS, the said is an applicant to the Board of Commis-
sioners of Excise of for a License to sell Ale and Beer at his
premises, in the according to the provisions of an
act to amend an act entitled "An Act to suppress intemperance and to regu-
late the sale of intoxicating liquors," passed April 16, 1857, and the acts
supplemental thereto and amendatory thereof:

Now, THEREFORE, the condition of this obligation is such, that if, during
the term for which License shall be granted, will not suffer
place of business to become disorderly, or suffer any gambling or keep any
gambling table of any description within the premises so kept by
and that will not sell or suffer to be sold, any strong or spirituous
liquors or wines except Ale and Beer, at the place aforesaid, or in any out-
house, yard or garden appertaining thereto, then this obligation to be void,
else to remain in force.

Signed, sealed and delivered }
in presence of }

County of ss:

On this day of A. D., 18 , before me personally
came to me known to be the individuals described in and who
executed the foregoing bond, and severally acknowledged that they exe-
cuted the same for the uses and purposes therein mentioned.

The following forms are inserted as guides to the practitioner.
It will, however, be necessary to refer to the several statutes in
the work, and to alter each form according to the particular case.

No. 7.

COMPLAINT UNDER EXCISE LAW—INNKEEPER,

Court;

County of

The Board of Commissioner of Excise of
the of in the county
of
against

The Board of Commissioners of Excise of the of
in the County of plaintiffs, complain of defendant
and allege :

I. That the said *defendant* did, on or about the day of
18 , at the of in said county, sell to a person, to the
plaintiffs unknown, Strong and Spirituous Liquors, to wit : Wines, Rum,
Gin, Brandy, Whisky, Ale and Strong Beer, to be drank in house or
shop, and in an out-house, yard or garden appertaining thereto, and did
suffer and permit such liquors and wines sold by him, and under his direc-
tion or authority, to be drank in his house or shop, and in an out-house,
yard or garden thereto belonging, without having obtained a License there-
for as an inn, tavern or hotelkeeper, granted according to law, contrary to
and in violation of the provisions of the “ Act to suppress intemperance
and to regulate the sale of intoxicating liquors,” passed April 16th, 1857,
and the amendments thereto, whereby the *defendant* became indebted and
liable to pay to the said plaintiffs the sum or penalty of fifty dollars for
said offense.

II. And for a second and further cause of action against said *defendant*
the plaintiffs allege that the said *defendant* did, on or about the
day of 18 , at the of in said county, sell to a
person, to the plaintiffs unknown, Strong and Spirituous Liquors, to wit :
Wines, Rum, Gin, Brandy, Whisky, Ale and Strong Beer, to be drank in
his house or shop, and in an out-house, yard or garden appertaining there-
to, and did suffer and permit such liquors and wines sold by him, and
under his direction or authority, to be drank in his house or shop, and in
an out-house, yard or garden thereto belonging, without having obtained
a License therefor as an inn, tavern or hotelkeeper, granted according to
law, contrary to and in violation of the provisions of the “ Act to suppress
intemperance and to regulate the sale of intoxicating liquors,” passed April
16, 1857, and the amendments thereto, whereby the *defendant* became in-
debted and liable to pay to the said plaintiffs the sum or penalty of fifty
dollars for said offence.

III. And for a third and further cause of action against said *defendant*, the plaintiffs allege that the said *defendant* did, on or about the day of 18 , at the of in said county, sell to a person, to the plaintiffs unknown, Strong and Spirituous Liquors, to wit : Wines, Rum, Gin, Brandy, Whisky, Ale and Strong Beer, to be drank in his house or shop, and in an out-house, yard or garden appertaining thereto, and did suffer and permit such liquors and wines sold by him, and under his direction or authority, to be drank in his house or shop, and in an out-house, yard or garden thereto belonging, without having obtained a License therefor as an inn, tavern or hotelkeeper, granted according to law, contrary to and in violation of the provisions of the " Act to suppress intemperance and to regulate the sale of intoxicating liquors," passed April 16, 1857, and the amendments thereto, whereby the *defendant* became indebted and liable to pay to the said plaintiffs the sum or penalty of fifty dollars for said offense.

IV. And for a fourth and further cause of action against said *defendant* the plaintiffs allege that the said *defendant* did, on or about the day of 18 , at the of in said county, sell to a person, to the plaintiffs unknown, Strong and Spirituous liquors, to wit : Wines, Rum, Gin, Brandy, Whisky, Ale and Strong Beer, to be drank in his house or shop, and in an ont-house, yard or garden appertaining thereto, and did suffer and permit such Liquors and Wines sold by him and under his direction or authority, to be drank in his house orshop, and in an out-house, yard or garden, thereto belonging, without having obtained a License therefor as an inn, tavern or hotelkeeper, granted according to law, contrary to and in violation of the provisions of the " Act to suppress intemperance and to regulate the sale of intoxicating liquors," passed April 16, 1857, and the amendments thereto, whereby the *defendant* became indebted and liable to pay to the said plaintiffs the sum or penalty of fifty dollars for said offense.

Wherefore, the said plaintiffs demand judgment against the said *defendant* for four penalties of fifty dollars each, making in the whole the sum of two hundred dollars, besides costs.

Plaintiffs' Attorney.

No. 8.

INDICTMENT FOR SELLING ON SUNDAY.

In the Court of of the County of
Of Term, in the year of our Lord one thousand eight hundred and
City and County of ss:

*The Jurors for the People of the State of New York in and for the
body of the , being then and there sworn and
charged, upon their oath,*

Present, that late of the of the
in the County of aforesaid, did on Sunday, to wit, on the
day of in the year of our Lord one thousand eight hundred
and at the of in the County of
aforesaid, willfully, unlawfully and maliciously sell to divers
citizens of this State, and to divers persons whose names are to the jurors
aforesaid unknown, and did cause to be sold to divers citizens of this
State, and to divers persons whose names are to the jurors aforesaid un-
known, intoxicating liquors and wines, to wit : one pint of wine, one pint
of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint
of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a
beverage, in contempt of the People of the State of New York against the
form of the statute in such case made and provided, and against the peace
of the People of the State of New York and their dignity.

SECOND COUNT. And the jurors aforesaid, upon their oath aforesaid, do
further present :

That late of the , in the County of
aforesaid, did on Sunday, to wit, on the day of in
the year of our Lord one thousand eight hundred and
at the of in the County of aforesaid,
willfully, unlawfully and maliciously give away to divers citizens of this
State and to divers persons whose names are to the jurors aforesaid un-
known, and did cause to be given away to divers citizens of this State and
to divers persons whose names are to the jurors aforesaid unknown, intoxi-
cating liquors and wines, to wit : one pint of wine, one pint of brandy, one
pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint
of beer, one pint of lager beer and one pint of cordial, as a beverage, in
contempt of the People of the State of New York, against the form of the
statute in such case made and provided, and against the peace of the
People of the State of New York and their dignity.

THIRD COUNT. And the jurors aforesaid, upon their oath aforesaid, do
further present :

That late of the , in the County of
aforesaid, w at the time of the commission of the offense here-
inafter stated inn, tavern and hotel-keeper and that so being
inn, tavern and hotel-keeper , said did on Sun-
day, to wit, on the day of in the year of our Lord
one thousand eight hundred and at the of
in the County of aforesaid, willfully, unlawfully,
and maliciously sell to divers citizens of this State and to divers persons
whose names are to the jurors aforesaid unknown, and did cause to be sold
to divers citizens of this State and to divers persons whose names are to
the jurors aforesaid unknown, intoxicating liquors and wines, to wit : one

pint of wine, one pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

FOURTH COUNT. And the jurors aforesaid, upon their oath aforesaid, do further present :

That late of the , in the County of aforesaid, w at the time of the commission of the offense hereinafter stated inn, tavern and hotel-keeper and that so being inn, tavern and hotel-keeper said did on Sunday, to wit, on the day of in the year of our Lord one thousand eight hundred and at the of in the County of aforesaid, willfully, unlawfully and maliciously give away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown and did cause to be given away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

District Attorney.

No. 9.

INDICTMENT FOR SELLING LIQUOR ON ELECTION DAY.

In the Court of of the County of
Of Term, in the year of our Lord, one thousand eight hundred and ss :

The Jurors for the People of the State of New York, in and for the body of the , being then and there sworn and charged upon their oath.

Present, that late of the , in the County of aforesaid, upon a day on which a was held in the of in said county, and within one-quarter of a mile from the place where such was then and there held, to wit, on the day of in the year of our Lord, one thousand eight hundred and at the said of in

the County of aforesaid, willfully, unlawfully and maliciously did sell to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, and did cause to be sold to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one pint of gin; one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SECOND COUNT. And the jurors aforesaid, upon their oath aforesaid, do further present:

That late of the , in the County of aforesaid, upon a day on which a was held in the of in said county, and within one-quarter of a mile from the place where such was then and there held, to wit, on the day of in the year of our Lord one thousand eight hundred and at the said of in the County of aforesaid, did willfully, unlawfully and maliciously give away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, and did cause to be given away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

THIRD COUNT. And the jurors aforesaid, upon their oath aforesaid, do further present:

That late of the in the County of aforesaid, w at the time of the commission of the offense hereinafter stated inn, tavern and hotel-keeper , and that so being inn, tavern and hotel-keeper , said upon a day on which a was held in the of in said County, and within one-quarter of a mile from the place where such was then and there held, to wit, on the day of in the year of our Lord, one thousand eight hundred and at the said of in the County of aforesaid, did willfully, unlawfully and maliciously sell to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, and did cause to be sold to divers citizens in this State and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint

of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

FOURTH COUNT. And the jurors aforesaid, upon their oath aforesaid, do further present:

That late of the , in the County of aforesaid, w at the time of the commission of the offense hereinafter stated inn, tavern and hotel-keeper , and that so being inn, tavern and hotel-keeper said upon a day on which a was held in the of in said County, and within one-quarter of a mile from the place where such was then and there held, to wit, on the day of in the year of our Lord, one thousand eight hundred and at the said of in the County of aforesaid, did willfully, unlawfully and maliciously give away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, and did cause to be given away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

District Attorney.

No. 10.

INDICTMENT FOR NOT CLOSING LICENSED PLACE.

In the Court of of the County of
Of Term, in the year of our Lord one thousand eight hundred and

ss.:

The Jurors for the People of the State of New York, in and for the body of the , being then and there sworn and charged, upon their oath

Present, that late of the in the County of aforesaid w at the time of the commission of the offense hereinafter stated person licensed to sell liquors, and that so

being *person* licensed by the Board of Excise of the
of in said County of , by a License permitting *h*
to sell and dispose of, at a named place within such Strong
or Spirituous Liquors, Wines, Ale and Beer, in quantities less then five
gallons at a time ; and that said so being then and there
person so licensed to sell Strong or Spirituous Liquors, Wines, Ale and
Beer, and then and there having, at and in said licensed place, a place for
the sale thereof, at a time when such selling was not authorized by law,
to wit, on the day of
in the year of our Lord one thousand eight hundred and
at the said of willfully, unlawfully
and maliciously did not close and keep closed *h* said place so licensed
as aforesaid, the said place not being then and there kept open as a hotel
to receive or entertain travelers, in contempt of the People of the State of
New York, against the form of the statute in such case made and provided,
and against the peace of the People of the State of New York and their
dignity.

SECOND COUNT. And the jurors aforesaid, upon their oath aforesaid, do
further present :

That late of the , in the County of aforesaid,
w at the time of the commission of the offense hereinafter stated
person licensed to sell liquors, and that so being *person* licensed
by the Board of Excise of the of in said County of
, by a license permitting *h* to sell and dispose of, at a
named place within such Strong or Spirituous Liquors, Wines,
Ale and Beer, in quantities less then five gallons at a time ; and that said
so being then and there *person* so licensed to sell Strong
or Spirituous Liquors, Wines, Ale and Beer, and then and there having, at
and in said licensed place, a place for the sale thereof, at a time when such
selling was not authorized by law, to wit, on
the day of in the year of our Lord one thousand
eight hundred and at the said of
willfully, unlawfully and maliciously did not close and keep closed *h*
said place so licensed as aforesaid, but the said did then and
there keep open *h* said place so licensed as aforesaid for a long time, to
wit, for the space of one hour, for the purpose of transacting and doing
business therein, and for the sale therein of Strong and Spirituous Liquors,
Wines; Ale and Beer, the said place not being then and there kept open as
a hotel to receive or entertain travelers, in contempt of the People of the
State of New York, against the form of the statute in such case made and
provided, and against the peace of the People of the State of New York
and their dignity.

THIRD COUNT. And the jurors aforesaid, upon their oath aforesaid, do
further present :

That late of the , in the County of
aforesaid, *w* at the time of the commission of the offense here-

inafter stated *person* licensed by the Board of Excise of the
of in said county of , by a License per-
mitting *h* to sell and dispose of, at a named place, within such

Strong and Spirituous Liquors, Wines, Ale and Beer, in quantities
less than five gallons at a time; and that said so being then
and there *person* so licensed to sell Strong or Spirituous
Liquors, Wines, Ale and Beer, and then and there having a place, at and
in said licensed place, for the sale thereof, at a time when such selling was
not authorized by law, to wit, on the day of
in the year of our Lord, one thousand eight hundred and
at the said of willfully, unlawfully and maliciously
did not close and keep closed *h* said place so licensed as aforesaid; but
the said did then and there keep open *h* said place so
licensed as aforesaid, for a long time, to wit, for the space of one hour,
for the purpose of transacting and doing business therein, and for the sale
therein of Strong and Spirituous Liquors, Wines, Ale and Beer, the said
place not being then and there kept open as a hotel to receive or entertain
travelers, and did then and there expose for sale and sell at and in said
licensed place, to divers persons whose names are to the jurors aforesaid
unknown, intoxicating liquors and wines, to wit: one pint of wine, one
pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one
pint of ale, one pint of beer, one pint of lager beer and one pint of cor-
dial, in contempt of the People of the State of New York, against the
form of the statute in such case made and provided, and against the peace
of the People of the State of New York and their dignity.

FOURTH COUNT. And the jurors aforesaid, upon their oath aforesaid, do
further present:

That late of the , in the County of
aforesaid, did on Sunday, to wit, on the day of in
the year of our Lord, one thousand eight hundred and at the
of in the County of aforesaid, willfully,
unlawfully and maliciously sell to divers citizens of this State and to
divers persons whose names are to the jurors aforesaid unknown, and did
cause to be sold to divers citizens of this State and to divers persons whose
names are to the jurors aforesaid unknown, intoxicating liquors and wines,
to wit: one pint of wine, one pint of brandy, one pint of gin, one pint of
rum, one pint of whisky, one pint of ale, one pint of beer, one pint of
lager beer and one pint of cordial, as a beverage, in contempt of the
People of the State of New York, against the form of the statute in such
case made and provided, and against the peace of the People of the State
of New York and their dignity.

FIFTH COUNT. And the jurors aforessid, upon their oath aforesaid, do
further present:

That late of the , in the County of
aforesaid, did, on Sunday, to wit, on the day of in
the year of our Lord, one thousand eight hundred and

at the _____ of _____ in the County of _____ aforesaid, willfully, unlawfully and maliciously give away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, and did cause to be given away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SIXTH COUNT. And the jurors aforesaid, upon their oath aforesaid, do further present:

That _____ late of the _____, in the County of _____ aforesaid, *w* _____ at the time of the commission of the offense hereinafter stated _____ inn, tavern and hotel-keeper _____, and that so being _____ inn, tavern and hotel-keeper _____, said _____ did, on Sunday, to wit, on the _____ day of _____ in the year of our Lord, one thousand eight hundred and _____ at the _____ of _____ in the County of _____ aforesaid, willfully, unlawfully and maliciously sell to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, and did cause to be sold to divers citizens of this State, and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SEVENTH COUNT. And the jurors aforesaid, upon their oath aforesaid, do further present:

That _____ late of the _____, in the County of _____ aforesaid, *w* _____ at the time of the commission of the offense hereinafter stated _____ inn, tavern and hotel-keeper _____, and that so being _____ inn, tavern and hotel-keeper _____, said _____ did, on Sunday, to wit, on the _____ day of _____ in the year of our Lord, one thousand eight hundred and _____ at the _____ of _____ in the County of _____ aforesaid, willfully, unlawfully and maliciously give away to divers citizen of this State and to divers persons whose names are to the jurors aforesaid unknown, and did cause to be given away to divers citizens of this State and to divers persons whose names are to the jurors aforesaid unknown, intoxicating liquors and wines, to wit: one pint of wine, one pint of brandy, one pint of gin, one pint of rum, one pint of whisky, one pint of ale, one pint of beer, one pint of lager beer and one pint of cordial, as a beverage, in contempt of the People of the State of

New York, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

District Attorney.

No. 11.

LICENSE TO SELL STRONG AND SPIRITUOUS LIQUORS, AND WINES, ALE AND BEER.

License Expires 18 *No.*

THE BOARD OF EXCISE of hereby certifies that being satisfied that of good moral character, that he has sufficient ability to keep an Inn, Tavern or Hotel, and the necessary accommodations to entertain travelers, and that an Inn, Tavern or Hotel is required for the actual accommodation of travelers at the place where such applicant resides or proposes to keep the same : Now, therefore, a License is granted to permitting to sell and dispose of STRONG AND SPIRITUOUS LIQUORS, WINES, ALE AND BEER, in quantities less than five gallons at a time, to be drank on the premises of said at excepting on Sundays or election days, or between one and five o'clock, A.M., for one year from date hereof, pursuant to the provisions of the Act of the Legislature of the State of New York, passed April 11, 1870, entitled "An Act to regulate the sale of intoxicating liquors," and of the Acts amendatory thereof.

This License is granted and accepted upon the express condition that the holder shall conform to the requirements of the said Acts of the Legislature, and that in case of any breach of such condition this License immediately shall be and become null and void.

Witness our hands this day of 18 .

Commissioners
of Excise of

Clerk.

This License must be kept in a conspicuous place.

No. 12.

STORE-KEEPER'S LICENSE TO SELL STRONG AND SPIRITUOUS LIQUORS AND
WINES, ALE AND BEER.

License expires 18 *No.*

THE BOARD OF EXCISE of hereby certifies that
a License is granted to permitting to sell and dispose
of STRONG AND SPIRITUOUS LIQUORS, WINES, ALE AND BEER, in quantities

less than five gallons at a time, at _____ excepting on Sundays or election days, or between one and five o'clock in the morning, but not to be drunk in _____ shops, housee, out-houses, yards or gardens, for one year from date hereof, pursuant to the provisions of the Act of the Legislature of the State of New York, passed April 11, 1870, entitled "An Act to regulate the sale of intoxicating liquors." This License shall not be deemed to authorize the sale of any strong or spirituous liquors or wine to be drunk in the house or shop of the person receiving the same, or in any out-house, yard or garden appertaining thereto or connected therewith, and is granted and accepted upon the express condition that the holder shall conform to the requirements of the said Act of the Legislature, and that in case of any breach of such condition this License immediately shall be and become null and void.

Witness our hands this _____ day of _____ 18 .

} Commissioners
} of Excise of

Clerk.

This License must be kept in a conspicuous place.

No. 13.

LICENSE TO SELL ALE AND BEER ONLY.

License expires _____, 18 . *No.*

THE BOARD OF EXCISE of _____ hereby certifies that a License is granted to _____ permitting _____ to sell and dispose of ALE AND BEER ONLY, in quantities less than five gallons at a time, at _____ excepting on Sundays or election days, or between one and five o'clock A.M., for one year from date hereof, pursuant to the provisions of Chapter 856 of the Laws of 1869. This License is granted and accepted upon the express condition that the holder shall conform to the requiremantas of the said Act of the Legislature, and that in case of any breach of such condition this license immediately shall be and become null and void.

Witness our hands this _____ day of _____ 18 .

} Commissioners
} of Excise of

Clerk.

This License must be kept in a conspicuous place.

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EXCISE LAW
OF THE
STATE OF NEW YORK,
WITH
CIVIL DAMAGE ACT,
AND ALL STATUTES, INCLUDING 1881.
WITH
NOTES OF DECISIONS OF THE COURTS
AND
FORMS,

With Supplement, Including Laws 1881, and Notes of Decisions.

BY WILLIAM W. SAXTON,
COUNSELLOR AT LAW,
COMPILER OF "TAX LAW OF THE STATE OF NEW YORK."

SECOND EDITION.

NEW YORK:
L. K. STROUSE & CO.,
LAW BOOKSELLERS AND PUBLISHERS,
93 NASSAU STREET.
1881.

SUPPLEMENT
TO
SAXTON'S EXCISE LAWS
OF THE
STATE OF NEW YORK.

LAWS OF 1881,
AND NOTES OF DECISIONS.

CHAPTER 642. LAWS OF 1874.

Salary of Commissioners of Excise of New York city.

Expenses.

Excise Moneys—how disposed of.

Comptroller's Warrant.

Payment of Warrants.

An act declaratory of and to amend chapter five hundred and forty-nine of the laws of eighteen hundred and seventy-three, entitled “ An act to amend an act entitled ‘ An act regulating the sale of intoxicating liquors,’ passed April eleventh, eighteen hundred and seventy, and the act entitled ‘ An act to suppress intemperance, and to regulate the sale of intoxicating liquors,’ passed April sixteenth, eighteen hundred and fifty-seven.’ ”

Passed June 23d, 1874, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section one of the act entitled “ An act to amend an act entitled ‘ An act regulating the sale of intoxicating liquors,’ ” passed April eleventh, eighteen hundred and seventy, and the act entitled “ An act to suppress intemperance, and to regulate the sale of intoxicating liquors,” passed April sixteenth, eighteen hundred and fifty-seven, is hereby amended so as to read as follows :

§ 2. Section two of the act entitled “ An act to regulate the sale of intoxicating liquors,” passed April eleventh, eighteen hundred and seventy, is hereby amended by inserting after the words “ and shall be paid as other city officers are paid,” the words following : Provided, that in the city of New York the commissioners of excise shall receive a salary not to exceed five thousand dollars a year each, to be fixed by the board of estimate and apportionment of said city, who shall annually fix such amount as may be necessary for hire of employees, rent, and other necessary expenses of said board of commissioners, which amount shall be paid out of the moneys received for licenses, and said commissioners shall receive no other compensation or emolument for services as commissioners ; and provided further, that all ex-

cise moneys hereafter derived from licenses for the sale of intoxicating liquors by said commissioners, except as above provided, shall from time to time and in sums according to their discretion, be appropriated by the board of apportionment and estimate of said city by resolution of the said board to whatever benevolent, charitable, or humane institutions may seem to such board deserving or proper, but no such resolution shall be valid unless adopted by the vote of a majority of the said board; and the comptroller of said city is hereby authorized and directed to draw his warrants in favor of the corporations, societies, or charitable institutions respectively mentioned in such resolutions according to the tenor thereof, and the chamberlain of said city shall pay such warrants out of the said moneys received for licenses, which are hereby directed to be deposited with and paid over to him within thirty days after it is received.

§ 3. This act shall take effect immediately.

See ante page 15, section 4., for section amended.

By the laws of 1880, chapter 377, the mayor and comptroller of the city of Brooklyn are to appoint a proper person to be the head of the department of police and excise, and designated the commissioner of police and excise; also two proper persons to be commissioners of excise.

The said two commissioners of excise shall act on all matters relating to excise with the commissioner of police and excise to be appointed pursuant to this act, and in respect to all matters of excise, but not of police, shall each possess the same power as the said commissioner of police and excise, who, nevertheless, shall be president of the commissioners of excise and the head thereof. After the first day of January, eighteen hundred and eighty-two, the mayor of the city of Brooklyn has sole and exclusive power to appoint their successors.

CHAPTER 164.

An Act to amend chapter one hundred and seventy-five of the laws of eighteen hundred and seventy, entitled “An act regulating the sale of intoxicating liquors.”

Passed April 30th, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section three of chapter one hundred and seventy-five of the laws of eighteen hundred and seventy, entitled “An

act regulating the sale of intoxicating liquors," is hereby amended so as to read as follows :

§ 3. The commissioners of excise shall meet in their respective cities, villages, and towns, on the first Monday of May, in each year, and on such other days as a majority of the commissioners shall appoint, not exceeding once each month in any one year, in any town or village, for the purpose of granting licenses as provided by law ; in cities they shall meet on the first Monday of each month, and as often as they shall deem necessary. All licenses hereafter granted shall expire on the first Monday of May succeeding the date of such granting, and all applicants, where such license is granted for a period of less than one year, shall pay a pro rata amount of the license fees established for their place of business, by the commissioners of their respective cities, towns and villages.

§ 2. This act shall take effect immediately.

See ante page 18, section 6.

CHAPTER 466.

- An Act to amend chapter one hundred and seventy-five of the laws of eighteen hundred and seventy, entitled " An act regulating the sale of intoxicating liquors," as amended by chapter one hundred and sixty-four of the laws of eighteen hundred and eighty-one.

Passed June 6th, 1881 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section three of chapter one hundred and seventy-five of the laws of eighteen hundred and seventy, entitled " An act regulating the sale of intoxicating liquors," as amended by chapter one hundred and sixty-four of the laws of eighteen hundred and eighty-one, is hereby further amended so as to read as follows :

§ 3. The commissioners of excise shall meet in their respective cities, villages and towns, on the first Monday of May, in each year, and on such other days as a majority of the commissioners shall appoint, not exceeding once each month in any one year, in any town or village, for the purpose of granting licenses as provided by law ; in cities they shall meet on the first Monday of each month, and as often as they shall deem necessary. All licenses hereafter granted shall expire on the first Monday of

May, succeeding the date of such granting, except in the cities of New York and Brooklyn ; and all applicants, where such license is granted for a period of less than one year, shall pay a pro rata amount of the license fee established for their place of business, by the commissioners of their respective cities, towns and villages ; and in said cities of New York and Brooklyn all such licenses shall expire at the end of one year from the time they shall be granted.

§ 2. This act shall take effect immediately.

See preceding Chapter.

CHAPTER 496.

Begging and picking rags &c., by children prohibited.

Children not allowed to play any game of skill or chance in saloons, &c.

Children detained in houses of prostitution.

Magistrates may commit.

Children under the age of 14 not to be admitted to theatre unless accompanied with some adult person.

An Act to amend chapter four hundred and twenty-eight of the laws of eighteen hundred and seventy-seven, entitled " An act for the protection of children and to prevent and punish certain wrongs to children," and to repeal chapter forty-eight of the laws of eighteen hundred and fifty-nine.

Passed June 13th, 1881 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The second section of chapter four hundred and twenty-eight of the laws of eighteen hundred and seventy-seven, entitled " An act for the protection of children and to prevent and punish certain wrongs to children," is hereby amended so as to read as follows :

§ 2. Every person having the custody of any child under the age of fourteen years, who shall permit or neglect to restrain such child from begging, gathering, picking or sorting of rags, or from collecting cigar stumps, bones or refuse from markets, shall be guilty of a misdemeanor. Any such child found engaged in any such occupation or business may be arrested and dealt with as hereinafter provided. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished with a fine of not less than twenty-five dollars nor more than one hundred dollars.

§ 2. Any person who shall suffer or permit any child under the age of sixteen years to play any game of skill or chance in any place wherein, or adjacent to which, any beer, ale, wine or liquor is sold, shall be guilty of a misdemeanor. And any such child found engaged in playing any such game in any such place may be arrested and detained as a witness against the person so offending.

§ 3. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, if, in the judgment of said magistrate, that the complainant has just and reasonable cause to suspect that any female child under the age of sixteen years is living, or detained, or kept, in any house or place for the purposes of prostitution, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests, authorizing him to enter and search such house or place, and to arrest and bring any such child found therein, together with any persons occupying such house or place, or in charge thereof, before such magistrate of competent jurisdiction, to be dealt with according to law.

§ 4. Any magistrate having criminal jurisdiction may commit temporarily to an institution authorized by law to receive children on final commitment, and to receive or derive compensation therefor from the city or county authorities, any child under the age of sixteen years held for trial on a criminal charge; and may, in like manner, so commit any such child held as a witness to appear on the trial, of any criminal case; which institution shall thereupon receive the same, and be entitled to the like compensation proportionally therefor as on final commitment, but subject to the order of the court as to the time of detention and discharge of the child. Any such child convicted of any misdemeanor shall be finally committed to some such institution, and not to any prison or jail or penitentiary, longer than is necessary for its transfer thereto. And no commitment of any child, which shall recite therein the facts upon which it is based, shall be held or deemed to be invalid by reason of any neglect or omission by the court or magistrate by whom such commitment is made, to file any documents, papers or proceedings relating thereto.

§ 5. Any owner, lessee, manager, agent or officer of any theatre, in any city in this State, who shall knowingly admit to any theatrical exhibition held therein in the evening, any child under the age of fourteen years, not accompanied by, or in the care of some adult person, shall be guilty of a misdemeanor.

Any such child found in any such theatre so unaccompanied may be arrested and disposed of in manner provided by law in cases of vagrant, truant, disorderly, pauper or destitute children.

Chapter forty-eight of the laws of eighteen hundred and fifty-nine is hereby repealed.

§ 6. This act shall take effect immediately.

See ante page 48, section 52.

CHAPTER 269.

Excise commissioners to be elected at same time and in same manner as other officers.

When to be elected.

To be classified.

Term of office.

How voted for.

An Act to authorize the commissioners of excise for the city of Lockport to be elected at the same time and in the same manner as other city officers are elected, instead of being appointed by the mayor.

Passed May 13th, 1881 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Hereafter the commissioners of excise for the city of Lockport, instead of being appointed by the mayor, shall be elected at the same time and in the same manner as other city officers are elected. At the annual election to be held in and for said city of Lockport on the second Tuesday of April, in the year eighteen hundred and eighty-two, there shall be elected three commissioners of excise, who, while acting as such commissioners, shall not hold any other city or ward office, and who shall compose the board of excise of said city, and discharge the duties imposed upon the present board of excise of said city by chapter one hundred and seventy-five of the session laws for the year eighteen hundred and seventy, and the laws amendatory thereof and supplementary thereto ; and shall be entitled to receive compensation at the rate of three dollars per day while in session as a board of excise, which shall be a city charge. The commissioners first elected under this act shall be classified by lot, under the superintendence of the mayor, or in case of his absence, of the city clerk of said city of Lockport, who shall attend at the office of the city clerk of said city for such purpose, within ten days after such election, and the persons drawing for one, two and three years shall serve for such term respectively ; and annually thereafter one commissioner of excise shall be elected for a

term of three years. The present commissioners of excise in said city of Lockport, and all who may be hereafter appointed prior to the first election under this act, shall only hold their office until commissioners of excise shall be elected under this act and shall have duly qualified, when their term of office shall end. Vacancies occurring in said board, so to be elected, from any cause, other than expiration of term of office, shall be filled by appointment by the mayor of the city of Lockport until the next annual election for city officers, when such vacancies shall be filled by election.

§ 2. The said commissioners shall be voted for upon a separate ballot, which shall be deposited in a separate box, marked "excise;" and before entering upon the duties of their offices shall each, severally, take and subscribe the constitutional oath of office and file the same with the city clerk of said city of Lockport, and shall execute a bond with sureties to the treasurer of the said city, to be approved by him, in the penal sum of three thousand dollars, conditioned for paying over to him or his immediate successor in office, within thirty days after the receipt thereof, all moneys received by them as such excise commissioners. Said moneys shall be disposed of by the common council of said city in supporting the poor of said city.

§ 3. Nothing in this act shall affect the provisions of any special act in so far as the same provides for any special disposition of excise moneys or fines.

§ 4. All acts or parts of act inconsistent with this act, so far as they relate to the city of Lockport and the commissioners of excise thereof, are hereby repealed.

§ 5. This act shall take effect immediately.

NOTES OF DECISIONS.

INNKEEPERS' BOND PARTIES.

IN an action by trustees of a village, upon a bond given by an innkeeper, under the statute, 2 R. S., 6th edition, p. 936, sec. 13. *Held*: That it was no defence that the bond lacked a seal.

The bond was to the people. *Held*: that upon such a bond the people are not trustees of an "express trust," within section 449, New Code.

The statute directed the trustees to see and recover the penalty of the bond, in case of a violation, but did not require that this action should be in the name of the trustees. *Held*: that it

might be brought in the name of the people, the obligees in the bond.

The People, respts., v. Groat et al., appls., 11 N. Y. Weekly Dig., p. 20. Gen. Term. Third Department.

PENALTIES PARTIES.

AN action to recover a penalty for a violation of the general excise law within the city of Kingston, must, under chapter 109 of the laws of 1878 be brought by the commissioners of the almshouse, and not by the board of commissioners of excise of said city.

The Commissioners of the Almshouse of Kingston, respts., v. Osterhoudt, applt., 11 N. Y. Weekly Dig., 100. Gen. Term. Third Department.

Action for penalties for selling liquor in Gloversville must be by village.

Village of Gloversville v. Howell, 70 N. Y., 287.

SUIT IN NAME OF OVERSEER OF POOR.

Where a person prosecutes in the name of the overseer of poor, without having complied with the statute, the action is unauthorized, and the person instituting it is chargeable with the costs thereof. As to whether one who, after complying with the statute, brings an action, but is defeated, is absolutely liable for costs, *quaere*.

Andrew Jobbitt, as Overseer of Poor, applt., v. Chester Giles, respt., 22 Hun., 274.

PENALTIES.

By chapter 628, laws of 1857, section 30 the right to prosecute for penalties is given to any person, in case the overseer, etc., neglect to do so for ten days after complaint that a provision of the act has been violated, "accompanied with reasonable proof of the same."

It seems that this proof must be definite and certain, not upon information and belief, and should identify the kind of liquor, and where it had been drank.

Jobbitt, Overseer, v. Giles, 22 Hun., 277.

EXCISE LAW, VIOLATION OF—EVIDENCE.

In an action brought to recover a penalty for the violation of the excise law in selling intoxicating liquors in quantities less than five gallons at a time, without a license, evidence was given that "liquor" was sold and drank in the presence of witnesses.

Held: sufficient to make out the offence charged, and that the jury were warranted in drawing the inference from the expression "liquor," and from the surrounding circumstances, that the sale was one of a prohibited article.

E. Marks et al., overseers' applts., v. T. Connell, respt., No. 2. Gen. Term. Second Department. Feb., 1881. 12 N. Y. Weekly Dig., 6.

CERTIORARI—PROCEEDINGS OF BOARD OF EXCISE.

On a certiorari to review the proceedings of a board of excise refusing to revoke the licenses of certain liquor sellers for a violation of the excise law, after a hearing on a complaint made, if it appear that the determination be contrary to law this court may reverse it, but this court has no power to revoke the license or to order a new trial, or to direct the defendants to restore the license.

Conceding that the statute under which the board of excise acts, laws of 1873, chapter 549, section 4, is mandatory and casts upon it the duty of revoking licenses, yet that duty is dependent on the board's becoming satisfied that the licensee had violated some provisions of the statute.

The People ex rel. Fouke et al. v. The Board of Excise of the Town of Flushing. Gen. Term. Second Department. Decided Feb., 1881. Reported in 12 N. Y. Weekly Dig., 25.

A license authorizing the sale of ale and beer to be drunk on the premises may be granted to a person who is not licensed as a hotel keeper.

A general reference, in a statute, to another statute which at the time of the reference has been amended, means the statute as amended, and not as originally passed. Hence where a law provides that an act passed at a specified date shall be deemed a part of it, it intends the act with its amendments, and not the act as it was at the date mentioned.

The amendment to the act of 1857, chapter 628, laws of 1857, p. 405, passed in 1869, laws of 1869, chapter 856, providing for the granting of ale and beer licenses elsewhere than in the Metropolitan police district, was by the act of 1870 (laws of 1870, chapter 175) extended and made applicable to the whole State, including the city and county of New York.

Matter of Mundy v. Excise Commissioners of New York City, N. Y. Supreme Court Special Term, Westbrook, J. 9 Abbott's New Cases, 117.

For construction of excise laws see same case. See also,

The People ex rel. Ochs v. Commissioners of Excise of the City of Brooklyn. 10 N. Y. Weekly Dig., 413.

Mandamus to Superintendent of Police to compel closing of liquor saloons on Sunday.

The People ex rel. Dakin v. Byrne. N. Y. Court of Appeal. Nov., 1879, not reported. See 9 Abbott's New Cases, p. 127.

CIVIL DAMAGE ACT.

In an action under the civil damage act for injury to means of support in consequence of intoxication, a recovery may be had when the intoxication caused the death of the intoxicated person; and in estimating the damages the condition of the family and the estate may be considered, but exemplary damages are not proper.

Roose v. Perkins, 9 Nebraska Rep., 304, 409.

Held: that under civil damage act, the person to whom liquor is sold, and who is injured by intoxication therefrom, cannot maintain an action therefor as an "other person."

Brooks v. Cook. Michigan Supreme Court, Nov. 10, 1880. 7 Northwestern Rep., 216.

English v. Beard, 51 Indiana Rep., 489.

Bodge v. Hughes, 53 New Hampshire, 614.

The civil damage law of Kansas provides that in case of injury to any one by reason of the intoxication of another, the person selling the liquor which "shall cause the intoxication" shall be liable for the injury. *Held*: that it is no defence to an action brought under this statute that the intoxication was caused partially by liquor sold by other parties; it is enough if the liquor sold by the defendant was the direct cause, either in whole or in part, of the intoxication. Where the separate acts of two wrongdoers contribute to and jointly cause the wrong, each is responsible as though he were the sole wrong-doer.

Werner v. Edmiston, to appear in 24 Kansas S. C. Reports.

Woolbeather v. Risely, 38 Iowa, 486.

Hackett v. Smelsley, 77 Illinois, 109.

Emory v. Addis, Chicago Leg. N., 336.

Bodge v. Hughes, 53 New Hampshire, 614, 616.

Boyd v. Watt, 27 Ohio State R., 259.

Roth v. Eppy, 16 Am. L. Reg. (N. S.), 111.

An intoxicated person going home at night had to cross a railroad. Next morning was found on the track killed by being run over by the cars.

Held: that the intoxication was the proximate cause of his death, and the seller of the liquor which intoxicated him, and the owner of the premises where it was sold, were liable, under the civil damage act to his widow, for injury to her means of support.

Schroeder v. Crawford, 94 Illinois R., 357.

The decision of a Board of Excise denying an application made in pursuance of section 4 of chapter 549, laws of 1873, to have a license revoked on the ground that the licensee has violated the provisions of the act, is not reviewable upon a *certiorari*, when the Board has not exceeded its jurisdiction or proceeded otherwise than in accordance with law.

People ex rel. Funkle v. Board of Excise, 24 Hun., 195.

